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THE NEW REPUBLIC

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Confirmed Liberal

SOON AFTER THIS MAGAZINE was founded, the editors joined with relish a fight over President Woodrow Wilson's nomination of Louis Brandeis to the Supreme Court. Defending Brandeis against his Boston enemies—the financial oligarchs whom he had attacked in his book *Other People's Money*—we championed his vision of liberal judicial restraint: namely, the view that courts should defer to progressive laws and regulations enacted by the states, Congress, and federal agencies. And THE NEW REPUBLIC has continued to champion Brandeis's vision for nearly a century, insisting that economic and social progress should come primarily from political actors rather than the courts.

In light of this history, President Obama's nomination of Elena Kagan to occupy the Brandeis seat—which passed from Brandeis to William O. Douglas to John Paul Stevens—is cause for celebration. Before nominating Kagan, Obama made clear he embraced Brandeis's preference that judges show restraint in cases involving contested visions of economic and social progress. At the end of April, Obama upset Warren Court nostalgists by pointing out astutely that liberal activist judges in the 1960s and '70s had overreached with an approach that “ignored the will of Congress, ignored democratic processes, and tried to impose judicial solutions on problems instead of letting the process work itself through politically.” Obama accurately noted that, today, it's conservatives who are making the same error: running to court to reverse their political defeats in areas ranging from campaign finance to health care to economic reform.

Kagan almost certainly shares the president's vision of liberal judicial restraint. Based on our close reading of her career and writings, it seems that she believes the president and Congress should have broad power in areas from health care and economic regulation to terrorism and national security policy, without being second-guessed by the courts. And Kagan recognizes that it's the Democrats who now believe in judicial restraint, or the view that courts should be hesitant to strike down laws and regulations endorsed by the president and Congress. As she wrote in her now-famous 1995 article on the confirmation process: “[G]iven that the Republican Party has an ambitious judicial agenda and the Democratic Party has next to none, why is the former labeled the party of judicial restraint and the latter the party of judicial activism?”

It's true that Kagan is not an heir to Brandeis in every respect. Although she likely shares his commitment to liberal judicial restraint, she lacks his crusading devotion to economic populism and opposition to “the curse of bigness” in corporate life and in the public sector. If there is an ideological perspective currently unrepresented on the Court, it's Brandeis's economic populism: Not a single justice, liberal or conservative, comes from the Brandeis tradition on this subject. The lack of a consistent voice for economic justice is obvious in the pro-corporate tilt of the Court's opinions. In 2006–2007, to take one recent session, 40 percent of the Court's docket was composed of business cases, and the vast majority of those on which the U.S. Chamber of Commerce weighed in were decided in its favor. Many of the Court's business decisions are activist in the sense that they second-guess, for example, malpractice verdicts by juries. We're heartened by the fact that Democratic senators plan to put economic populism at the center of the Kagan confirmation hearings and agree that she should be questioned closely on her views about the role of big business in U.S. life and law.



The lack of economic populism in her background aside, Kagan is an excellent choice in every other way. Not surprisingly, she has been assailed by enforcers of ideological purity on both the right and the left. (Some on both sides have also indulged in loathsome speculation about her sexual orientation, a matter which—even if her self-identification were unclear, and it is not—should be of no relevance to her ability to serve on the Court.) Conservatives seem to grasp that she is capable of standing up to the Court's far-right bloc, which has spent years pushing constitutional law in a radical direction. Meanwhile, some on the left are disappointed because they were hoping for a justice who could spearhead a new era of liberal activism. Instead, Kagan appears to belong to a third tradition: the tradition of progressive judicial restraint that was personified by Brandeis and that has now been endorsed by our current president. We are confident that Obama has found a justice who can carry this tradition into the twenty-first century. ♦

Vacuity and Farce

Our idiotic Supreme Court confirmation process.

JONATHAN CHAIT

THE SUPREME COURT is divided into two blocs, as hostile and immutable as NATO and the Warsaw Pact. In the middle of the two blocs sits Anthony Kennedy, a Yugoslavia-like figure who tilts toward one bloc but has demonstrated significant independence. When and how the delicate balance of power will be broken rests upon two questions: First, will one of the four liberals get sick and die during a Republican presidency before one of the four conservatives gets sick and dies during a Democratic presidency? More specifically, during which party's control of the White House will Kennedy retire or get sick and die? Upon these questions vast swaths of American law hinge.

I would submit that this is not a terribly sensible way to settle our ultimate legal questions. If we were designing a system from scratch, and somebody proposed an arrangement that looked like this, it would be laughed out of the room. Yet this is only the beginning of the absurdities that pile atop one another in the Supreme Court process.

Since the failed 1987 nomination of Robert Bork, which foundered on the nominee's controversial legal writings, prospective justices have steadfastly refused to discuss legal issues in their confirmation hearings. Elena Kagan, in a 1995 review, archly summarized Ruth Bader Ginsburg's impenetrable shield against questioning. She could not answer any specific legal question because it might prejudice a future ruling. On the other hand, "when asked a more general question, Ginsburg replied that a judge could deal in specifics only; abstractions, even hypotheticals took the good judge beyond her calling."

In recent years, Republican nominees have taken this practice to a new level of absurdity by not only refusing to divulge their opinions, but also insisting that opinions *have no bearing* upon their conduct as justices. "Judges are like umpires," John Roberts said at his confirmation hearings. "Umpires don't make the rules; they apply them."

Perhaps you thought the place of the Supreme Court is to rule on matters where the application of the law is subject to dispute, and that, therefore, justices hewing to different

philosophies would tend to hew to different interpretations of the law. That would make you a "judicial activist."

The beauty of this rhetorical approach is that it seizes the high ground in the judicial wars. If you're claiming that you simply apply the law as written and have no philosophy whatsoever, then your opponents have no ground to object without tacitly conceding their own preference for biased judges. The key to maintaining this pretense is to have the fewest possible recorded opinions, while still having a sufficiently deep non-judicial record that you can signal to your prospective president that you agree with his ideology and can be counted on to predictably vote with his favored bloc.

Kagan represents the state-of-the-art modern Supreme Court nominee. She has been preparing most of her career for the time when she would have to deny holding any legal opinions, while building deep connections to the Democratic establishment that leave no mystery as to how she will vote. On top of that, she's young. This increases the chance that the opposing team's justices will get sick and die before she does. The ultimate nominee would be some kind of child prodigy who graduated from law school at the age of eleven, interned for members of Congress of both parties yet secretly signaled ideological sympathy, and amassed five or six years of experience in the legal system without rendering actual opinions. She would matriculate to the Court in her late teens, thereafter residing in a bacteria-free bubble that would allow her to serve until the age of 106.

So we have a system based upon installing predictable judicial partisans selected on the basis of youth and the ability to plausibly deny having any political orientation. It is a lifetime appointment, which gives justices every incentive to lie during their hearings and no consequences for having done so. On top of this, add the odd

fact that most Republican senators and some Democrats are at least putatively committed to the principle that these lifetime appointments, which carry enormous power, should have a lower threshold of passage than almost any other kind of vote.

This odd viewpoint developed as a historical accident. The filibuster was once a rarity used primarily to stop civil rights legislation. It slowly came into more common usage during the 1980s and '90s. In 2005, Republicans had a majority in the Senate, but not enough to break a filibuster. At this point, they decided that the practice of subjecting judges to a supermajority requirement violated ... something, and they threatened to change the rules unless Democrats agreed never to do so.

During this imbroglio, Republicans declared themselves so passionately against the judicial filibuster that they have had to maintain this position even as they have extended the filibuster to unprecedented heights. Of course, if there's any kind of Senate vote where a supermajority makes sense, it's a lifetime judicial appointment. After all, laws can be undone, and executive branch appointments are temporary. Yet the lifetime judicial appointment, absurdly, is the one category of vote where the minority at least putatively endorses straight majority rule.

"The filibuster should be relegated to extreme circumstances," declared Senate Minority Whip Jon Kyl, "and I don't think Elena Kagan represents that." Apparently Kyl's idea of "extreme circumstances" includes things like the "United States Capitol Police Administrative Technical Corrections Act" and the nomination of Martha N. Johnson to be the administrator of the General Services Administration—both of which he filibustered.

The most darkly comic moment in the latest confirmation episode was supplied by Oklahoma Senator James Inhofe. Explaining his opposition to Kagan in a written statement, Inhofe noted, "I am also concerned about the seeming contempt she has demonstrated in her comments about the Senate confirmation process." So the mere fact that Kagan has expressed awareness of the absurdity of the confirmation process has itself become a reason to oppose her nomination. Add one more to the list of ideal Supreme Court nominee traits: a professed belief that the nomination system is just hunky-dory. I suspect we'll get that teenage justice yet. ♦

TRB *From Washington*



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June 10, 2010

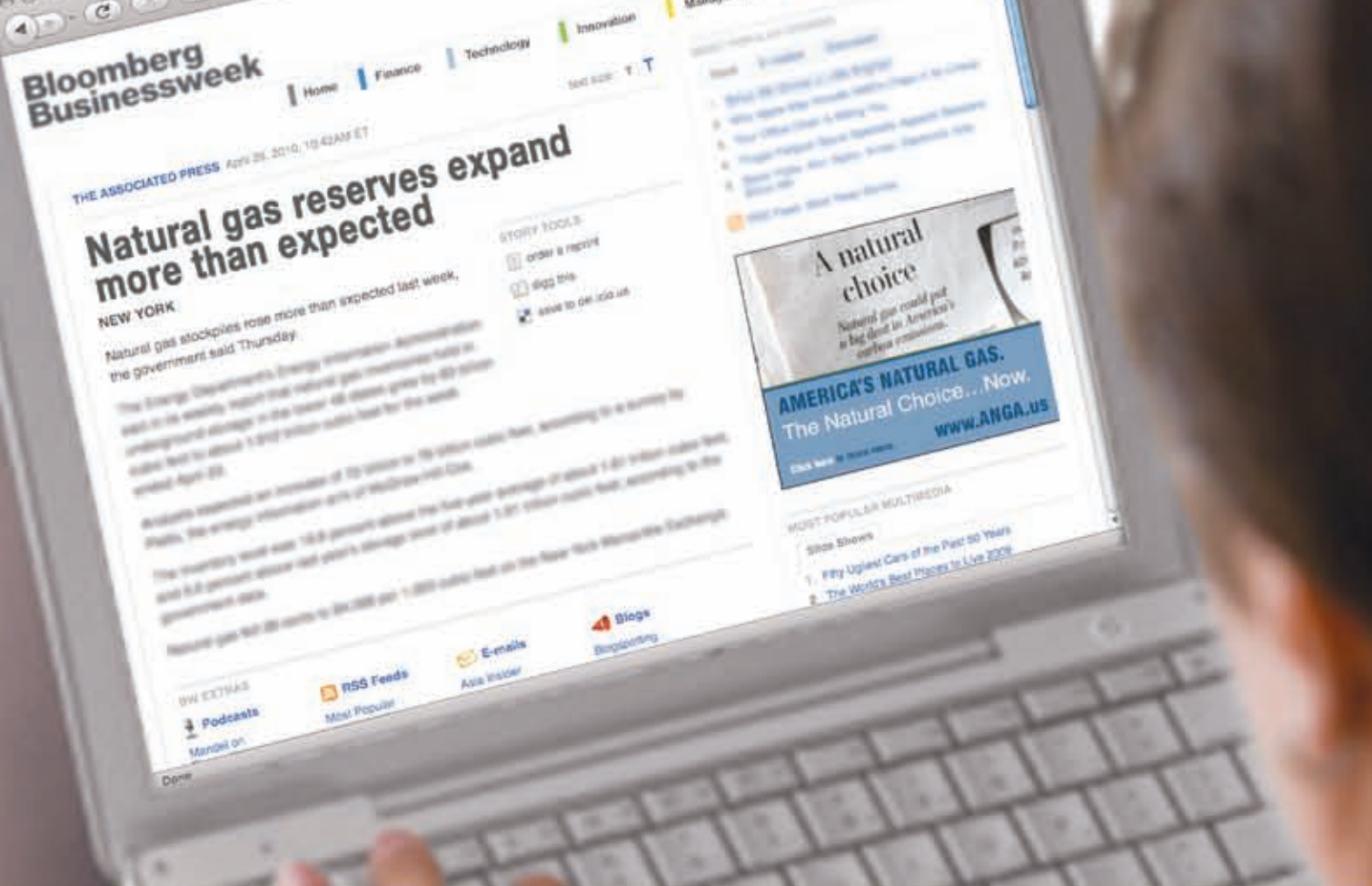
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ADVERTISING SALES AND MARKETING

EXECUTIVE DIRECTORS Jenna Golden (jgolden@tnr.com), 202-508-4442; Jaime Vasil (jvasil@tnr.com), 202-508-4482 | ACCOUNT DIRECTOR Julie Kettell (jkettell@tnr.com)
SALES ASSISTANT Caroline Black (cblack@tnr.com), 202-508-4462 | WEB PRODUCTION MANAGER Dennis Loney (dloney@tnr.com), 202-508-4465

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Is salt so different from crack?

AN INSTITUTE OF MEDICINE (IOM) report on salt isn't normally where you'd go to discover a muscular new approach to food regulation. But Fox News and the Salt Institute were not wrong to call last month's report nanny statish. What it proposes is a revolution in the relationship between the government and the food we put on our plates. For one thing, the IOM report calls for the Food and Drug Administration (FDA) to clamp down on salt in the absence of much evidence that consumers want the agency to do so. Though the aim is to reeducate us so that we'll realize that we *do* want such intervention, the main idea is for regulators to sidestep our desires and strike at the producers said to be salting us to death.

Do we really need the government to cut down on salt for us? The report paints a dark portrait of food-processing mills and satanic kitchens that certainly seems to justify drastic action. The authors start with the health consequences of salt overconsumption: high blood pressure; hypertension; 100,000 deaths per year; \$18 billion in health care costs. Then, they give us the big picture. Competition is driving manufacturers to put ever more outrageous quantities of salt in their concoctions, for the saltier a soup or piece of cheese, the better it tastes and the smoother it feels, and the more likely it is to outsell other brands. Meanwhile, consumers are too easily hooked on saltiness to keep from poisoning themselves. Therefore, the report concludes, the FDA should enforce limits on salt, and, by tightening these limits over time,

retrain our palates so that we don't crave saltiness as much. (It seems that it takes about three months for taste receptors to adjust to a less salty diet.)

We're so used to thinking of salt as, on the one hand, only vaguely bad for us—certainly not as bad as bisphenol A—and, on the other hand, so indispensable that it may come as a shock to have it re-categorized as an addictive substance. Salt has been a force for good throughout human history. Ever since our diet shifted away from game, which is naturally salty, toward grain, fruit, and vegetables, which aren't, we have needed to add salt to our diet or face low blood pressure. "The very name of salt breathes of health,"

writes the food historian Waverly Root. "It comes from the Roman god of health, Salus, who gave to the English language such words as 'salutary' and 'salute' ... not to mention 'salvation.'" Salt preserves the perishable and flavors the bland. The search for better ways to extract salt from the sea and the earth and distribute it has led to engineering marvels, public works, trade routes, and the invention of gastronomic staples to function as salt transport and delivery mechanisms, including salt cod and salami (whose name also comes from the word for salt).

What turned such a benevolent condiment into a toxin? Or, to use the language of food regulation, how did salt go from GRAS ("generally regarded as safe") to potentially harmful additive? The answer is a cautionary tale about what happens to your food when you cede control of its preparation. The story begins with the most profound change to have occurred in Western society in the twentieth century, which is the entry of women into the workforce. The explosion of both the packaged-foods industry and the chain restaurant business can be traced to the advent of dual-career and single-parent households, both of which labor under severe time constraints. Around 30 years ago, pressed for time and more flush with cash, we became less willing to perform the unpaid labor of food preparation and more eager to have food made for us. Thirty years ago is also when researchers spotted an uptick in numbers of obese Americans, the first sign of what is now described as an obesity epidemic. It turns out that, when we buy meals rather than make them, we generally wolf down larger portions (which manufacturers and restaurateurs prefer to sell to us, because bigger quantities yield



Can the government retrain our palates?

more revenue) of saltier, fattier foods (which manufacturers and restaurateurs also like to sell to us, because we're more likely to eat them whether we're hungry or not). When dinner consists of a Swanson's Hungry-Man XXL carved turkey meal, for instance, we may not realize that it contains nearly twice the recommended daily amount of salt—5,410 milligrams of it.

Salt is only a part of this story. One-third of it, to be exact. In his exposé of the food industry, *The End of Overeating*, former FDA commissioner David Kessler depicts a Fritz Lang–like world of secret laboratories in which industrial food scientists experiment with an unholy troika of “hedonic” ingredients—fat, sugar, and salt. Their goal is to create what he calls “hyperpalatable foods” that function as “supernormal stimuli.” (Conjure up a Cinnabon cinnamon roll, and you'll have the idea.) According to Kessler, we're biologically designed to pay attention to, and get excited about, unusual and outside sources of pleasurable stimulation, such as dishes stuffed with sugar, fat, and salt in quantities greater than any we've ever encountered before. These, in return, have the power to “alter the landscape of the brain.” Hyperpalatable foods deliver a jolt to the neurotransmitter that releases dopamine; after a time, dopamine neurons fire even at the suggestion of such food. That is the neurological process underlying craving. Once we've eaten what we crave, the brain floods with opioids, which bring relief. This dopamine-opioid release pattern is the basis of our food habit, which responds to environmental cues (pictures, ads, time of day) and not just physiological ones (hunger).

By means of “conditioned hypereating,” in Kessler's words, the food industry has hooked us on its unhealthy products nearly as surely as the tobacco industry did on cigarettes, though possibly with less understanding of the physiology involved. He proposes a multipronged counterattack against “big food”: posting calorie counts in restaurants, education campaigns, better labeling, and much closer regulation and surveillance of the food industry.

That is the intellectual matrix from which the IOM report emerges. The time-pressed, information-overloaded consumer needs the government's protection against the food industry's scientists, market researchers, and lobbyists. Moreover, as the report stresses, the FDA would not be telling people to put away their salt shakers. It turns out that table

salt accounts for only 5 percent of sodium consumed, and, when people salt their own food, they put in less than one-fifth the amount that industrial processors do. If all you do is salt at the table, rather than at the stove, you add even less: When salt crystals cling to the surface of a food, they yield a sense of saltiness to your tongue more readily.

Nonetheless, if you're a food lover or cook and try to imagine how, exactly, the new salt regulations will be put into practice, it's hard to feel a surge of pleasant anticipation. The bulk of the recommendations involve “big food”—food processors, chain restaurants, and other mass operations such as the school lunch program and the military. But non-chain restaurants oversalt, too; how, exactly, will the line cook at the corner bistro with the heavy hand be forced to comply with the code? Consider, too, the question of which foods should be desalted. Soda or children's cereal? No problem. Olives? Hmm. The report put off recommending specific food categories to be exempted. Some committee members apparently weren't sure any foods should be completely exempted, because, if any supersalty foods were left in our diets, our palates might fail to be retrained.

In addition, reeducation programs focused on a single ingredient almost always confuse people. No matter how careful education campaigns are to stress that salt is essential to life in small doses, some Americans will demonize the condiment, rather than its industrial overuse. Food psychologist Paul Rozin has shown that a substantial minority of test subjects, regardless of class or educational level, respond to a confusing barrage of nutritional information with “a monotonic mind,” “categorical thinking,” and the fear of contagion. That is, they reason that, if a lot of something is bad for you, a little of it must be too.

The real problem with the salt-reduction campaign, though, is that it doesn't go far enough. We can't change the way Americans eat simply by scaring them in turns about fat, then bisphenol A, then salt, then presumably sugar. Nor is regulating salt the first step toward regulating fat and sugar. If anything, the FDA is likely to expend political capital on salt, then be unable to get Americans' attention to push through reforms on fat and sugar. We need to stop ingesting *all* these substances in ludicrous amounts. To do that, we need information even more than we need regulation—but we need

our information to be radically honest. We need to be taught not just what's in processed food, but how historically anomalous its manufacture and our consumption of it are. We need to understand the mechanisms that addict us to it. We need to relearn how to prepare real meals, and we need to start rethinking the social dynamics of that chore (it can't just be up to wives and mothers anymore). It's pretty hard to imagine the government conducting *that* education campaign, but, 20 years ago, it may have been just as hard to imagine the “truth campaign” that exposed the tobacco industry's marketing techniques and the transformation of social norms that made it *déclassé* to smoke. As the former regulator Kessler puts it, “We've learned from the major public health battles of the past that while legislation and regulation play a major role, the greatest power rests in our ability to change the definition of reasonable behavior.”

JUDITH SHULEVITZ

Judith Shulevitz is the author of THE SABBATH WORLD: GLIMPSES OF A DIFFERENT ORDER OF TIME.

Homegrown

The rise of American jihad.

MOST OF US HAVE in our minds a general sense of what a jihadist is. And Faisal Shahzad, who, earlier this month, was charged with attempting to detonate a car bomb in Times Square, probably fits the bill. Since September 11, Americans have come to think of terrorism as a fundamentally foreign phenomenon that has somehow ensnared us. We have frequently been assured that the United States—unlike Europe—does not have a homegrown terrorism problem. Other than the fact that Shahzad is an American citizen, his profile conforms to this general pattern: He originally hailed from Pakistan. He was apparently working with the Pakistani Taliban. And he seems to have been furious at U.S. policies toward his native region of the world. Like the men who carried out September 11, Shahzad could not be described as a homegrown American terrorist.

And yet, Shahzad notwithstanding, there are reasons to think that this image of a jihadist is both outdated and incomplete. For one thing, the United States *does* have a homegrown terrorist problem: Of the 202 people charged in the United States with serious jihadist crimes since September 11, 131 have

ANTHONY RUSSO

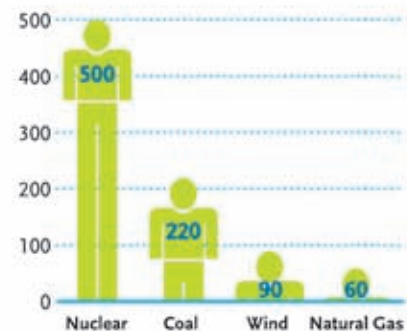
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been American citizens—and, of those 131, over one-third are, unlike Shahzad, American-born. Moreover, of the 54 people charged in major terrorism cases since the beginning of last year, at least twelve (and perhaps as many as 20) were converts to Islam. If you read through the documents surrounding recent terrorism cases—the complaints, indictments, and so on—it becomes clear that the classic notion of a jihadist as someone dispatched by Al Qaeda or the Taliban from a far corner of the world to protest U.S. foreign policy by killing massive numbers of civilians no longer captures the full picture. On the contrary, the concept of jihad has come to encompass an array of agendas, affiliations, and tactics. Jihad has put down roots in America. And, at the same time, it is arguably being shaped by America as well.

ONE AFTERNOON last October, a squad of law-enforcement officers surrounded a warehouse in Dearborn, Michigan. According to a criminal complaint that had been filed the previous day, the people holed up inside the building were seeking to “establish a separate, sovereign Islamic state ... within the borders of the United States, governed by Shariah law.” The group’s leader, Luqman Ameen Abdullah—a 53-year-old imam who had praised Osama bin Laden and the Taliban—refused to surrender. He shot a police dog and was killed in the ensuing skirmish. Days later, all ten of his co-conspirators were under arrest, their cache of firearms and swords confiscated.

As jihad-related developments went, the Dearborn arrests were not particularly noteworthy (in the end, the federal government did not even classify them as a terrorism case). Still, one detail about the episode stood out: Abdullah’s group was an offshoot of a larger organization founded by, of all people, H. Rap Brown. There was, to be sure, no reason to think that the onetime Black Panther (who is serving a life sentence in jail) had played any role in the group’s activities. But the fact that a cell of Muslim militants had taken inspiration from an American icon of black nationalism who later converted to Islam is not something to ignore either. It points to some of the ways in which jihadism has grown more complicated over the past decade, as it has become, in part, a home-grown U.S. phenomenon.

Like Abdullah, most of those arrested in the Dearborn case were not born in



Most of those charged with serious jihadist crimes since 9/11 have been U.S. citizens.

Muslim countries. They were not even born to Muslim families. Most were African American converts to Islam. They were hardly alone: American-born converts to Islam, white and black, have been showing up on the radar of law enforcement officials and federal prosecutors as terrorism suspects for years. Probably the most famous is California native John Walker Lindh, who was arrested in Afghanistan shortly after September 11 and who had converted to Islam when he was in his late teens. Earnest James Ujaama, who was convicted for attempting to set up a terrorist training camp in Oregon, had converted in the 1990s, as had Randall Todd Royer, a member of a group that law enforcement calls the Virginia Jihad Network. Another American-born convert, a D.C. taxi driver named Mahmud Faruq Brent, was convicted of providing material support to the Pakistan-based terrorist group Lashkar-e-Taiba. In Illinois, convert Derrick Shareef was arrested for plotting to use a hand grenade in a shopping mall. Russell Defreitas, a suspect in an alleged plot to blow up jet-fuel supply tanks at JFK Airport, was born in Guyana but had been living in the United States for roughly four decades. He, too, is a convert. So is Daniel Boyd, the alleged leader of a group of Islamic radicals based in North Carolina; Colleen LaRose, a Pennsylvania resident charged with planning to murder a Swedish cartoonist; and James Cromitie,

who has been accused of plotting to blow up a synagogue in the Bronx. Then there is Michael Finton, also known as Talib Islam, a strong-looking, red-haired 29-year-old who converted to Islam in prison and traveled to Saudi Arabia, according to the government. He was eventually arrested during a sting operation after allegedly parking a van that he thought was loaded with explosives at the Paul Findley Federal Building in Springfield, Illinois.

Of course, even as the ranks of jihadists have grown more varied, there are certain overarching continuities with the older, Al Qaeda-centric version of jihad. Many jihadists are still motivated by what they see as the unfair treatment of their Muslim brethren around the globe. “They smashing the Muslims all over the world,” Abdullah says in one of the FBI’s taped conversations. LaRose described herself as “desperate to do something somehow to help” her fellow Muslims. Brent said he was “pushed ... over the edge” by watching videos of Muslims suffering. Even for American converts, in other words, traditional Islamist concerns remain part of the picture.

At the same time, the motivations and ideas professed by jihadists have expanded in numerous directions. Ideological strains beyond Al Qaeda’s worldview seem to have influenced at least a handful. Lindh was apparently attracted to Islam by Malcolm X’s writings. Ujaama, in the course of defending himself, said, “My brother and I have listened to every revolutionist from Mao Tse Tung to

ANTHONY RUSSO

Malcolm X.” Finton—who kept a copy of *The Anarchist Cookbook*, the radical Vietnam-era book that included bomb-making recipes—“said he had been pretty much anti-authority his whole life, and that even before Islam he had hated the American government,” according to a government complaint.

Some would-be jihadists seem to have attempted to assimilate other violent episodes from U.S. history into their thinking. Abdullah believed that both the 1993 World Trade Center attack and the Oklahoma City bombing were, in the words of a government complaint, “part of a plot to blame Muslims for violence.” And this is how Defreitas explained his alleged decision to pick JFK Airport as a target: “Anytime you hit Kennedy, it is the most hurtful thing to the United States. To hit John F. Kennedy, wow. They love John F. Kennedy like he’s the man. If you hit that, this whole country will be in mourning. It’s like you can kill the man twice.”

Then there are the curious cases of Ronald Allen Gricula and Gale Nettles, who both linked their violent plans to jihad even though there is no evidence that either man was ever a Muslim. Gricula, embittered at losing custody of his children, sought to sell explosives to Al Qaeda. Nettles, who had done a stint in prison for counterfeiting, plotted to blow up a Chicago courthouse, called himself “Ben Laden,” and asked to be introduced to someone associated with Hamas or Al Qaeda. Can these men be accurately described as jihadists? It is difficult to say. Still, it seems noteworthy that the concept of jihad held enough broad-based appeal for them to want to attach themselves to it.

In the words of former FBI special agent Ali Soufan, “Many of the African Americans and other white Americans who join Al Qaeda have done so not because they specifically identify with Al Qaeda’s aims, but because they have their own grievances against the U.S. government and see in Al Qaeda an entity that appears to be successfully battling the U.S., and who they think can sponsor their battles.” Terrorism expert (and TNR contributing editor) Peter Bergen put it this way when he testified before Congress last year: “Decades ago the anger and disappointments of some of these men might have been funneled into revolutionary anti-American movements like the Weather Underground or Black Panthers. Today, military jihadism provides a similar outlet for the rage of young men.”

Not only have the types of people who identify as jihadists greatly diversified in

recent years; so has their approach to terrorism. Traditionally, Al Qaeda-directed jihad revolved around dramatic acts of violence meant to cause mass loss of life: September 11; the London public transit bombings; the 2006 plot to blow up ten flights simultaneously. Jihadists still aspire to such dramatic attacks, but, in recent years, they have also trained their sights on less prominent targets, many of them government buildings. Shareef, convicted for targeting a mall, also reportedly told his FBI informant, “I’m thinking stuff like courthouses, city hall, government places, government facilities.” And Cromitie, charged with plotting to bomb a Bronx synagogue in spring 2009, allegedly planned to target an Air National Guard base in Newburgh, New York. Other targets of jihadists in recent years have included Fort Hood in Texas, Marine Corps Base Quantico in Virginia, Fort Dix in New Jersey, Dobbins Air Reserve Base in Georgia, and the FBI building in North Miami Beach.

IN SHORT, we are facing not one type of threat from jihadists but many. Some of these threats—like Umar Farouk Abdulmutallab, the Nigerian national linked to Al Qaeda in the Arabian Peninsula who has been charged with trying to blow up a Detroit-bound flight on Christmas Day—seem more like foreign policy problems. The attempted Times Square bombing appears to fall into this category as well. Others seem fundamentally domestic, as much in the tradition of the Oklahoma City bombing or the assassination of President McKinley as in the tradition of September 11 and other acts of international jihadism. Still others seem to combine elements of both. Needless to say, this range of threats offers a novel challenge to law-enforcement officials—who, if nothing else, need to find more creative ways to involve Muslim communities in anti-radicalization efforts.

Whatever the policy responses, however, one fact is obvious: It is no longer possible to think of jihad as a purely foreign phenomenon. American jihad ranges the full spectrum from lone nuts cloaking a general appetite for violence in jihadist rhetoric to more sophisticated would-be terrorists who have actually trained abroad. In all these cases, it is a threat we ought not to ignore.

KAREN J. GREENBERG

Karen J. Greenberg is executive director of New York University's Center on Law and Security and author of THE LEAST WORST PLACE: GUANTANAMO'S FIRST 100 DAYS.

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ADVERTISING SALES AND MARKETING

ASSOCIATE PUBLISHER

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EXECUTIVE DIRECTOR

Jaime Vasil, 202-508-4482 (jvasil@tnr.com)

ACCOUNT DIRECTOR

Julie Kettell (jkettell@tnr.com)

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The Crisis Comes Ashore

Why the oil spill could change everything.

AL GORE

THE CONTINUING UNDERSEA gusher of oil 50 miles off the shores of Louisiana is not the only source of dangerous uncontrolled pollution spewing into the environment. Worldwide, the amount of man-made CO₂ being spilled every three seconds into the thin shell of atmosphere surrounding our planet equals, in tons, the highest current estimate of the amount of oil spilling from the Macondo well every day. Indeed, the average U.S. coal-fired power plant gushes more than three times as much global-warming pollution into the atmosphere each day—and there are over 1,400 of them.

Just as the oil companies told us that deep-water drilling was safe, they tell us that it's perfectly all right to dump 90 million tons of CO₂ into the air of the world every 24 hours. Even as the oil spill continues to grow—even as BP warns that the flow could increase multifold, to 60,000 barrels per day, and that it may continue for months—the head of the American Petroleum Institute, Jack Gerard, says, “Nothing has changed. When we get back to the politics of energy, oil and natural gas are essential to the economy and our way of life.” His reaction reminds me of the day Elvis Presley died. Upon hearing the tragic news, Presley's manager, Colonel Tom Parker, said, “This changes nothing.”

However, both the oil spill in the Gulf of Mexico and the CO₂ spill in the global atmosphere are causing profound and harmful changes—directly and indirectly. The oil is having a direct impact on fish, shellfish, turtles, seabirds, coral reefs, marshes, and the entire web of life along the Gulf Coast. The indirect effects include the loss of jobs in the fishing and tourism indus-

tries; the destruction of the health, vitality, and rich culture of communities in the region; imminent bankruptcies; vast environmental damage expected to persist for decades; and the disruption of seafood markets nationwide.

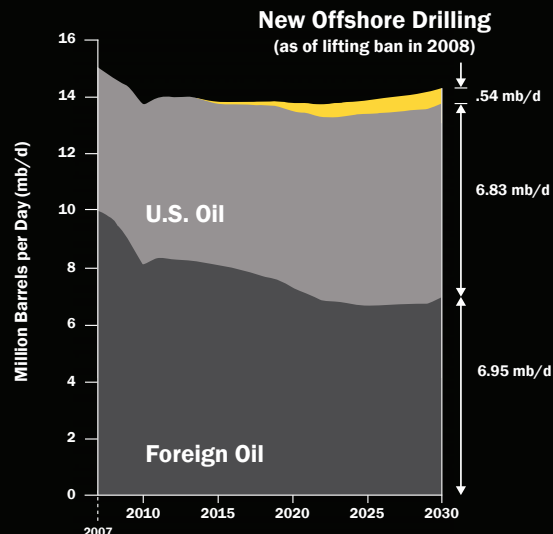
And, of course, the consequences of our ravenous consumption of oil are even larger. Starting 40 years ago, when America's domestic oil production peaked, our dependence on foreign oil has steadily grown. We are now draining our economy of several hundred billion dollars per year in order to purchase foreign oil in a global market dominated by the huge reserves owned by sovereign states in the Persian Gulf. This enormous and increasing transfer of wealth contributes heavily to our trade and current-account deficits, and it enriches regimes in the most unstable region of the world, helping to finance both terrorism and Iran's relentless effort to build a nuclear arsenal.

The profound risk to our national and economic security posed by the prospect of the world's sudden loss of access to Persian Gulf oil contributed greatly to the strategic miscalculations and public deceptions that led to our costly invasion of Iraq, including the reckless diversion of military and intelligence assets from Afghanistan before our mission there was accomplished.

I am far from the only one who believes that it is not too much of a stretch to link the ongoing wars in Iraq, Afghanistan, and northwestern Pakistan—and even the recent attempted bombing in Times Square—to a long chain of events triggered in part by our decision to allow ourselves to become so dependent on foreign oil.



U.S. Crude Oil Consumption



Source: ©2010 2030, Inc. / Architecture 2030
Data Source: U.S. Energy Information Administration

IMAGE: HEROUN + CO.

HERE AT HOME, the illusion that we can meaningfully reduce our dependence on foreign oil by taking extraordinary risks to develop deep reserves in the Outer Continental Shelf is illuminated by the illustration on the previous page. The addition to oil company profits may be significant, but the benefits to our national security are trivial. Meanwhile, our increasing appetite for coal is also creating environmental and human catastrophes. The obscene practice known as “mountaintop mining,” for instance, is not only defacing the landscape of Appalachia but also destroying streams throughout the region and poisoning the drinking water of many communities.

The direct consequences of burning these vast and ever-growing amounts of oil and coal are a buildup of heat in the atmosphere worldwide and the increased acidity of the oceans. (Although the world has yet to focus on ocean acidification, the problem is terrifying. Thirty million of the 90 million tons of CO₂ being spilled each day end up in the oceans as carbonic acid, changing the pH level by more than at any time in the last many millions of years. This inflicts every form of life in the ocean that makes a shell or a reef with a kind of osteoporosis—interfering with their ability to transform calcium carbonate into the hard structures upon which their lives depend—that threatens the survival of many species of zooplankton at the base of the ocean food chain.)

But rising global temperatures and increasing acidification in the ocean are only the beginning. These processes have triggered a cascading set of other impacts:

- The melting of virtually all of the mountain glaciers in the world—already well underway—threatening the supplies of fresh water for drinking and agriculture in many parts of the world.
- The prospective disappearance of the North Polar ice cap, which, for most of the last three million years, has covered an area roughly the size of the continental United States. Approximately 25 percent to 30 percent of this ice cap (measured by the area that it used to cover) has disappeared in the last 30 years during summer. The thickness of the remaining ice has also sharply diminished.
- The melting of the two largest masses of ice on the planet—on top of Green-

land and Antarctica (especially West Antarctica, where the bottom of the ice rests under the sea atop submerged islands)—is already accelerating far beyond earlier estimates, threatening catastrophic increases in sea levels worldwide.

- As the seas rise more rapidly, many millions of climate refugees will be forced to flee from areas they have long called home. Indeed, thousands have already been forced to move from low-lying island nations. The government of the Maldives has included a new line item in this year’s budget for a fund to buy a new country. That option will not be available to Bangladesh.
- Deeper and longer droughts in mid-continent regions, as soil moisture evaporates more rapidly with higher temperatures.
- More and larger forest fires as drier vegetation becomes kindling for lightning—which, according to researchers at the University of Tel Aviv, is also predicted to increase at the rate of 10 percent with each additional degree of temperature.
- The migration of tropical diseases to temperate latitudes, as new ecological niches invite the intrusion of viruses and bacteria and the mosquitoes, ticks, and other “vectors” that carry these diseases. This process is also already underway.
- An accelerated extinction rate which, according to E.O. Wilson and other biologists, threatens to reach levels not seen since the dinosaurs were wiped out 65 million years ago.
- The increased destructive power of tropical storms coming off the ocean (hurricanes, cyclones, and typhoons—all different names for the same phenomenon). Though the number of these storms is not predicted to grow, their destructive power is—due to increases in wind speeds and moisture content.
- Increasingly large downpours of both rain and snow—with a steady shift from snow to rain—resulting in a higher frequency of large floods on every continent.

This last phenomenon—long understood by scientists to be one of the most

confidently predictable consequences of global warming—hit home for many of my neighbors recently when Nashville, the city where I live, suffered what the Army Corps of Engineers described as “a 1,000 year rain event” that caused horrendous flooding—mostly in neighborhoods that had no flood insurance, because homeowners there had been assured that they lived well outside the historic flood plain. The tragic loss of many lives was accompanied by the ruination of thousands of homes and property damages that Mayor Karl Dean estimated at \$1.5 billion dollars.

Scientists are always careful in the way they describe the cause-and-effect relationship between global warming and such events: It is a mistake, they say, to attribute any single extreme weather event only to global warming, because there is large natural variability in weather—but the odds of extremely large downpours, scientists repeatedly insist, are steadily increasing with global warming, and such events are predicted to become far more common with each passing decade because, when water evaporates from the warmer oceans, warmer air holds more of it. Average humidity worldwide has already increased by 4 percent since 1970, and each additional degree Fahrenheit increases it by another 3 percent to 4 percent. The range of increases in global average temperature during this century is estimated at between 2°F to 11.5°F. The high end of this range would be utterly catastrophic, threatening the survival of civilization as we know it.

Even now, the hydrological cycle of the entire globe is being radically altered. The timing and predictability of rainfall is changing in ways that are already beginning to disrupt agriculture—particularly subsistence agriculture in developing countries. Crop failures and food insecurity are increasing ominously in many regions where farmers are no longer able to rely on the clockwork intervals of rainy seasons and dry seasons they learned from previous generations.

The record snowfalls last winter in the northeastern United States also fit into the same pattern. Indeed, the Northeast has long been included among the regions of the world predicted to experience the most dramatic increases in precipitation.

Unusual changes in precipitation patterns are now being observed in many regions throughout the world. Last month, British scientists working near the North Pole were astonished by an unprecedented April rainfall. David Phillips, a senior climatologist in Canada,

described the event as “bizarre,” adding, “This is up there among fish falling from the sky or Niagara Falls running dry.”

Temperatures inside the Arctic Circle are increasing far more rapidly than in the rest of the world because the progressive melting of ice and snow leads to a radical change in the amount of heat absorbed by the surface of the uncovered tundra and Arctic Ocean. Incoming solar radiation is no longer reflected by the ice and snow. Arctic researchers from the University of Washington have documented the beginning of significant releases of methane caused by the rapid thawing of permafrost in Alaska and Siberia.

ONE IMPORTANT difference between the oil spill and the CO₂ spill is that petroleum is visible on the surface of the sea and carries a distinctive odor now filling the nostrils of people onshore. Carbon dioxide, on the other hand, is invisible, odorless, tasteless, and has no price tag. It is all too easily put “out of sight and out of mind.” Because the impacts of global warming are distributed worldwide, they often masquerade as an abstraction. And, because the length of time between causes and consequences is longer than we are used to dealing with, we are vulnerable to the illusion that we have the luxury of time before we begin to respond.

But neither assumption is correct. Most of the heat trapped by greenhouse gases is stored in the oceans and re-emerges over time into the atmosphere. As a result, we are capable—through inaction—of making truly disastrous consequences that are inevitable long before the worst impacts are manifested. Our perception of the dangers of the climate crisis therefore relies on our ability to understand and trust the conclusions reached by the most elaborate and impressive scientific assessment in the history of our civilization.

In other words, rather than relying on visceral responses, we have to draw upon our capacity for reasoning, communicating clearly with one another, forming a global consensus on the basis of science, and making a choice in favor of preventive action on a global scale.

Over the last 22 years, the Intergovernmental Panel on Climate Change has produced four massive studies warning the world of the looming catastrophe that is being caused by the massive dumping of global-warming pollution into the atmosphere. Unfortunately, this process has been vulnerable to disruption and paralysis by a cynical and lavishly funded disin-

formation campaign. A number of large carbon polluters, whose business plans rely on their continued ability to freely dump their gaseous waste products into the global atmospheric commons—as if it were an open sewer—have chosen to pursue a determined and highly organized campaign aimed at undermining public confidence in the accuracy and integrity of the global scientific community. They have attacked the scientists by financing pseudo-studies aimed at creating public doubt about peer-reviewed science. They have also manipulated the political and regulatory processes with outsized campaign contributions and legions of lobbyists (there are now four anti-climate lobbyists for every single member of the House and Senate).

This epic contest between the broad public interest and a small but powerful special interest has taken place during a time when U.S. democracy has grown sclerotic. The role of money in our politics has exploded to a dangerous level. Our democratic conversation is now dominated by expensive 30-second TV commercials, which consume two-thirds of the campaign budgets of candidates in both political parties. The

The crisis in the Gulf of Mexico is a consciousness-shifting event. It is one of those rare clarifying moments, an opportunity to take the long view.

only reliable source of such large sums of campaign cash is business lobbies. Most members of the House and Senate facing competitive election contests are forced to spend several hours each day asking special interests for money to finance their campaigns. Instead of participating in committee hearings, floor debates, and Burkean reflections on the impact of the questions being considered, they spend their time as supplicants. Though many struggle to resist the influence that their donors intend to have on the decision-making process, all too frequently, human nature takes its course.

Their constituents now spend an average of five hours per day watching television—which is, of course, why campaigns in both political parties spend most of their money on TV advertising. Viewers also absorb political messages from the same special interests that are wining and dining and contributing to their elected officials. For the last 17 years, the largest carbon polluters have sought to manipulate public opinion with a massive and

continuing propaganda campaign, using TV advertisements and all other forms of mass persuasion. It is a game plan spelled out in one of their internal documents, leaked to an enterprising reporter, that stated: “reposition global warming as theory rather than fact.” In other words, they have mimicked the strategy pioneered by the tobacco industry, which undermined the scientific consensus linking the smoking of cigarettes with diseases of the lung and heart—successfully delaying appropriate health measures for almost 40 years after the landmark surgeon general’s report of 1964.

Meanwhile, many other countries—including China—have developed national strategies for leading the historic shift from oil and coal to renewable forms of energy, higher levels of efficiency, smart grids, fast trains, and sustainable agriculture and forestry.

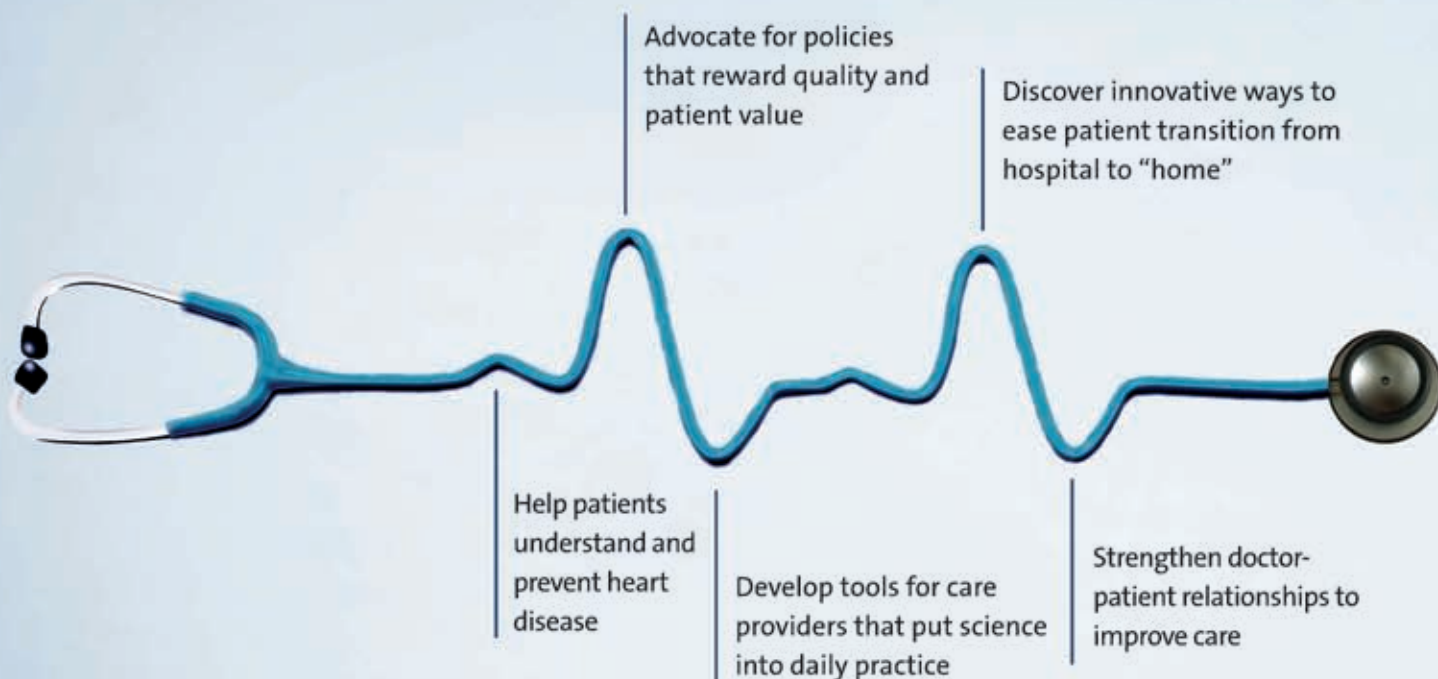
Here in the United States, the House has passed a meaningful plan to move the country in the same direction and reestablish our capacity to provide leadership in the global community on the most important issue facing the world today. The Senate, however, has struggled for the last 17 months to find enough votes to take up its own version of the same legislative plan. The unpleasant reality now spilling onto the shores of the Gulf Coast is creating public outrage and may also be generating a new opportunity to pass legislation, just as the oil spill 20 years ago from the *Exxon Valdez* created public momentum sufficient to overcome the anti-environment special interests. There is new hope that, by the time we stanch the gusher from the bottom of the Gulf of Mexico, we will also have capped carbon emissions from the burning of oil and coal.

It is understandable that the Obama administration is focused on the immediate crisis in the Gulf of Mexico. But this is a consciousness-shifting event. It is one of those clarifying moments that brings a rare opportunity to take the longer view. Unless we change our present course soon, the future of human civilization will be in dire jeopardy. Just as we feel a sense of urgency in demanding that this ongoing oil spill be stopped, we should feel an even greater sense of urgency in demanding that the much larger and more dangerous ongoing emissions of global-warming pollution must also be halted to make the world safe from the climate crisis that is building all around us.

Al Gore, former vice president of the United States, is chairman of the Alliance for Climate Protection.

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How They Did It

The inside account of health care reform's triumph.

JONATHAN COHN

WHEN THE PRESIDENT and his closest advisers huddled in the Oval Office last August, they had every reason to panic. Their signature piece of legislation, comprehensive health care reform, was mired in the Senate Finance Committee and the public was souring on it. Unemployment was on the march, and all this talk about preexisting conditions and insurance exchanges barely registered above the Fox News pundits screaming, “Death panel!” Suddenly, health care reform was under attack everywhere—even in the West Wing.

All week, the group had debated whether to scale back the reform effort. Now, a decision point had come, according to several people who were in the room. Press Secretary Robert Gibbs said he couldn't keep telling reporters that there was progress on reform when, in fact, it plainly wasn't happening.

Counselor David Axelrod, who viewed health care as a political graveyard, presented a stark view of the president's falling poll numbers. Axelrod didn't argue that it was time to abandon comprehensive reform, but Vice President Joe Biden and chief of staff Rahm Emanuel did. Make a quick deal that would extend insurance coverage to parents and children, they urged, and put off broader action until later. Neither man had substantive qualms with comprehensive reform. They simply saw it sucking the political life out of the new presidency, just like it did to Bill Clinton more than a decade ago.

Their political logic was impeccable. And, at another time, Barack Obama might have heeded it. Universal health care had not been a defining cause for him before his presidential bid. During one of his first policy tutorials on the subject, back in 2006, advisers were dismayed that he spent the session typing



PETE SOUZA/WHITEHOUSE/SIPA PRESS/NEWS.COM

President Obama meets with the health care “stakeholders.”

away on his BlackBerry—attention they believed that he desperately needed to spend mastering intricacies.

Focus had come with the campaign and, later, the first months of his presidency. By August, Obama could square off against any health care wonk in the country, including the ones who worked for him. Still, the passion he discovered wasn't ultimately about the substance of health care policy—not entirely, anyway. Obama had come to view this debate as a proxy for the deepest, most systemic crises facing the country. It was a test, really: Could the country still solve its most vexing problems? If he abandoned comprehensive reform, he would be conceding that the United States was, on some level, ungovernable. Besides, several aides recall him saying, “I feel lucky.”

After the meeting broke up, a few of

his advisers milled in the hallways outside the Oval Office, pondering the prospect of taking up such a high-risk strategy because the president “felt lucky.” As one of them later told me, “It was like, holy shit.”

OF COURSE, we know how this narrative concludes, with Obama sitting in the East Room, inscribing his signature onto the Patient Protection and Affordable Care Act of 2010—completing a quest that eluded Harry Truman and a trio of his successors. But the question that the president posed in that August meeting still lingers: How did the U.S. system, and its leadership, truly perform in the face of this test?

In the immediate aftermath of his legislative triumph, Barack Obama has

barely received credit. Polls show the public doesn't particularly like the new law. Conservatives are livid over the expansion of government. Liberals are ambivalent, disappointed as much with their leaders as with the legislation. There are, in short, widespread questions about whether the ordeal was worth it—and whether the president and Democratic leaders could have charted a better, alternative course.

These are questions I asked myself constantly over the last two years, as reform legislation first took shape and, then, as it moved through Congress. I believed that legislation was worth passing—that its champions were, by and large, making the best of difficult circumstances—even if I didn't like all the compromises. But those are complicated judgments to make in real time, based on only the

reporting snippets that come through eclectic sources.

What follows is an effort to revisit those judgments, with the benefit of hindsight and fuller information. This is the story of how health care reform came together—and, more than once, nearly fell apart. It's based on hundreds of hours of conversation over the last two years and a series of interviews with key players conducted in the last few weeks. It is the story of a president with transformational aspirations, a congressional party ill at ease with power, political institutions that have been roundly written off as sclerotic, and an experiment in government action that has only just begun.

Getting Schooled

IHAPPEN TO BE a proponent of a single-payer universal health care plan." That's how, according to a video that eventually went viral, Obama described his position on health care. But the grainy clip came from 2003, when Obama first started running for the U.S. Senate. Obama was no stranger to the issue: He'd watched his mother struggle with medical bills as she was dying from cancer. But his policy thinking on the issue was crude and, by the standards of professional politicians, somewhat dated.

"Single-payer" meant government-run health care. And it is what New Deal Democrats had in mind when they first took the idea of national health insurance seriously. Democrats would eventually realize that vision for the elderly in 1965, with the creation of Medicare. But faith in the government dwindled after the 1960s. Government-run insurance would thrive in other countries, like France and Taiwan. But it was a nonstarter here—and Democrats needed alternatives.

They found one in an idea the right had begun championing in the 1970s, when even Republicans began fretting over the cost of care but were desperate for a market-based solution. The idea was to give everybody insurance but to make it private insurance, with consumers shopping around for the best plans. Eventually, Clinton proposed such a scheme, one of his signature blends of conservative means and liberal ends.

But, for the public, the relevant distinction wasn't so much left versus right as change versus the same. And, under Clinton's plan, most working-age people had to dump existing insurance to buy one of the new regulated private plans.

Yes, Americans craved security—they wanted to know coverage would be there if they lost a job and provided for them if they got sick. But, by and large, they didn't want government forcing them to change their coverage, even if it was a change for the better.

In the bleak political aftermath of Clintoncare's defeat in 1994, the Democratic Party's thinkers and strategists obsessed over how to get the policy and the politics right next time—which was sure to come, since rising costs put medical care increasingly out of reach for even the middle class. Slowly, the wonks gravitated toward an approach that accounted for the public's anxieties—one that let people with relatively good insurance, the type that large companies routinely provide, keep their coverage. The big changes would be for everybody else—individuals buying on their own, small businesses, and the uninsured. For them, the government would set up a regulated marketplace, where everybody could buy affordable coverage regardless of preexisting conditions. These marketplaces, designed to look like the networks through which federal workers got their plans, would include subsidies so that everybody could afford a policy.

It was an idea that lived exclusively in academia until 2006, when political serendipity thrust it onto the Massachusetts state political agenda. Under a special arrangement the state had previously made with the federal government, it stood to lose billions in aid unless lawmakers found a way to increase the number of people with health insurance. Republican Mitt Romney, the consultant-turned-governor eager to burnish his reputation as a problem-solver, seized on the idea of creating these new regulated marketplaces and partnered with the Democratic legislature to pass it. The Massachusetts reforms eventually brought insurance coverage to 97 percent of the state, the highest such rate in the country. MIT economist Jonathan Gruber, one of the plan's architects, led a group of center-left intellectuals who hyped the experiment's success and touted it as a model for national action in articles, speeches, and consultation with prominent Democratic Party politicians.

Liberals, though, continued to eye these schemes skeptically: They simply didn't trust private insurance, even the highly regulated and subsidized version in Massachusetts. But soon, a new twist emerged, one promoted most visibly by

Jacob Hacker, a political scientist then at the University of California, Berkeley. The idea was to throw a government-run insurance plan into the mix, not as the insurer for all, but simply as an option for people or businesses that wanted it. Backed by a prominent liberal think tank (the Economic Policy Institute) and a new, well-funded activist organization (Health Care for America Now), he pitched this "public option" as a way to provide competition with the private sector, while offering peace of mind to those who trusted government more than the anonymous medical reviewers at a behemoth like United-

Healthcare. The idea became something of a litmus test for liberals; many not-so-secretly hoped the public plan was a big first step toward single-payer.

Conservative voters and most of the business community, naturally, had different priorities. They worried more about what high medical bills were doing to corporations and the federal budget. They feared liberal reforms would address the problem, if at all, through blunt price controls and rationing. But years of research, first developed at Dartmouth, suggested that as much as one-third of medical spending was waste—not paperwork or overhead, but care that simply didn't make people better. Among those who noticed was Peter Orszag, a former Clinton administration economist who'd become director of the Congressional Budget Office (CBO). Orszag was a fiscal conservative, but he'd come to realize the government's long-term fiscal problem was largely a health care problem. And the Dartmouth research suggested that it was possible to reduce health care spending without actually reducing care—or, at least, reducing good care. Orszag, a fitness fanatic, became obsessed with this research—and, through his work, helped give it centrist credibility. A new, fragile consensus had emerged.

ANDY STERN was perplexed. Under his leadership, the members of the Service Employees International Union (SEIU) had been single-minded in the promotion of health care reform. In early 2007, SEIU and the Center for American Progress invited all the Democratic presidential candidates to Las Vegas to discuss health care with a live audience. The two best-known front-runners, Hillary Clinton and John Edwards, gave detailed disquisitions that reflected their deep knowledge. Obama seemed vague and hesitant. One audi-



ence member, whom friends would later nickname the Obaminator, said she'd checked his website—and found nothing of substance there. "Keep in mind," Obama replied, "our campaign right now is a little over eight weeks old."

Obama had seemed surer of himself when Stern met him at a Washington restaurant months before. Maybe Obama just hadn't realized, until that moment in Vegas, how demanding a presidential campaign was—and how he'd be competing against politicians of similar intellect. "I just felt like the valedictorian had met the other valedictorians and suddenly realized that he maybe wasn't the smartest kid in the class anymore," Stern told me.

But Obama was smart enough to realize he'd blown it in Vegas. He also knew that political pros would be watching the rollout of his plan closely—to see whether he was ready to play in prime time and how he intended to position himself ideologically. Edwards had announced his plan first, back in February, and put on the table an ambitious package to cover all Americans. Not since Clinton in 1992 had a top candidate seriously proposed something like universal coverage. Obama's plan would call for the same rough mix of ideas as Edwards's—in keeping with the new consensus, he wanted to leave employer-sponsored coverage in place and create exchanges for everybody else to buy insurance. It would also include extensively documented ideas for reducing the cost of care, which Edwards hadn't done. But, in a critical move, Obama opted not to require that everybody get insurance.

To most policy wonks, the "individual mandate" was an essential ingredient of Massachusetts-style reform; David Cutler, Obama's chief health care adviser, had written as much in a recent book. You couldn't require insurers to cover anybody without requiring everybody to get coverage; otherwise, healthy people would wait until they got sick before buying insurance. But Obama opted not to endorse a mandate, except for children. Insurance purchases would be voluntary, at least in the beginning.

Reform advocates and experts raised their eyebrows: Did this mean Obama wasn't serious about reform? Was he paying too much attention to polls, which frequently showed that individual mandates were unpopular? Hillary Clinton hadn't yet published her own plan. But she (along with Edwards) quickly seized on an estimate published in *THE NEW REPUBLIC*, based on a rough calculation by MIT's Gruber, that Obama's

plan would likely leave 15 million people without coverage because those people would opt not to buy insurance. Over the coming months, Clinton hammered Obama relentlessly on this point; Obama hit back with ads and mailers suggesting she'd make people buy insurance they couldn't afford. It was a bit awkward: Former Senator Tom Daschle, an Obama confidant, had written his own book on health care and, like Cutler, had called for a mandate. But the gambit worked well—and Obama won the nomination.

As focus turned to the general election, Obama instructed his campaign team to make health care a central part of the party platform, making explicit the commitment to "universal" coverage. He also gave the issue prominent play in his speeches. The countless debates with Clinton had sharpened Obama's skills, and, his aides say, the countless town-hall meetings had deepened his awareness of the problem. As Anita Dunn, who was a senior adviser, puts it, "When you've traveled the country for two years and heard all of these stories, you can't just leave these people behind."

John McCain's decision to introduce a health care plan gave Obama new opportunities to hammer away at the issue, although it also focused attention in a peculiar way: McCain had proposed to eliminate the tax exclusion for employee health-insurance premiums. Pollsters said it was a highly unpopular idea, and Obama attacked him for it mercilessly. This prompted complaints from some Democrats and intellectuals, who believed that such a tax change—in the context of a different reform plan—might be useful. They wondered if maybe Obama wasn't so committed to health care reform, and, after Obama won, they sought signs to allay their anxieties.

A month after the election, Obama tapped Tom Daschle to run both the Department of Health and Human Services and a new White House Office of Health Reform. He reached out to Orszag about running the Office of Management and Budget (OMB). But doubts about Obama's intentions persisted, even internally. During the transition and, then, during discussions of the president's first budget, advisers like Axelrod raised some of the same concerns they had aired during the campaign. It was a political loser with the middle class, most of which had insurance; it could kill the Obama presidency. Daschle—who was spending much of his time in Massachusetts, tending to his ailing brother—heard about these discussions secondhand and put the question to Obama directly, in a

face-to-face meeting: How serious was Obama about health care?

Obama reassured Daschle—this was going to be his legacy. Soon, he would settle on a budget that called for universal coverage and, using an idea first developed by the Treasury Department's Gene Sperling, set aside a reserve fund composed of half new revenue and half savings within the health care system. Obama's next move was to hold a summit at the White House, with members of Congress and the leaders of interest groups present. He was going forward. Who was going with him?

Workhorses

IT WAS AN intimate gathering at Ted Kennedy's home in Washington—just the senator, his colleague Max Baucus, and three senior staffers who worked with them on health care. Kennedy, who loved historical artifacts, pulled out an original version of the *Federalist Papers* that his wife, Vicki, had given him as a gift. He also demonstrated one of the home's architectural quirks: a hidden bar, accessible through a secret door in the sitting-room bookcase.

But soon, as discussion turned to President Obama's health care agenda, Kennedy turned serious and wistful. He had waited years for the moment—and spent the previous twelve months preparing for it. But time was now the enemy. The longer it took to get reform through Congress, the less likely Congress would be to pass the legislation—and the less likely Kennedy would be around to witness it. Less than a year before, physicians had diagnosed him with terminal brain cancer. He'd vowed to fight it, but he was coming to grips with political reality and his own mortality. "There was a sense of urgency in Kennedy's voice," one of the guests would later recall. "You could sense just how committed he was to getting this done, no matter what happened to him."

Outwardly, Kennedy and Baucus were different in every conceivable way: Kennedy commanded a room, spoke with a booming New England accent, and had a flair for the dramatic. Baucus seemed uncomfortable in his own skin, mumbled through public statements, and preferred to make his mark by negotiating deals across a table. The ideological differences were starker still: Kennedy was one of the few Democrats who still relished the label of "liberal." Baucus came from Montana, maintained one of the most conservative voting records in the Democratic caucus, and routinely

antagonized his party's base. During the Bush era, he famously broke with party leadership and cut deals with Republicans over tax cuts and the Medicare drug bill. When he showed up for the final Medicare drug vote with a black eye, he joked that he'd gotten it at a Democratic caucus meeting.

Baucus had the ability to kill legislation. Kennedy's Health, Education, Labor, and Pensions (HELP) committee has the word "health" in its name, but Baucus's Finance Committee is the one that oversees government revenue, Medicare, and Medicaid. In 1993 and 1994, Daniel Patrick Moynihan presided at Finance. Moynihan, eager to pursue welfare reform instead of health, basically declared the Clinton plan dead on arrival—and, then, helped make it so. But Baucus wasn't running away from comprehensive health care reform. He was embracing it. He thought of himself as a senator with a history of passing major legislation—not just the Medicare drug bill, but also the Clean Air Act Amendments of 1990. And he was able to do this, he thought, precisely because he was willing to reach across the aisle in a way Democrats to his left wouldn't. He had started talking about health care reform right after the Medicare drug fight, and, in 2008, he began preparing for it in earnest. To lead his team, he brought back Liz Fowler, who had left his staff in 2005 to work for WellPoint insurance. To arm his committee with financial information about industry, he later recruited Tony Clapsis, a former Barclays analyst.

The ties Fowler and Clapsis had to business were typical of Finance and a major reason so many reformers distrusted the committee. Sometimes, those appearances were deceiving; after WellPoint had fought efforts to bring Massachusetts-style reforms to California, Fowler told friends she was frustrated with the company's right-wing politics. But, with the revolving door between the industry and committee staff, not to mention the campaign donations the industry made to the members, trade groups had no problem communicating their feelings—and getting responses.

KENNEDY WAS ALSO thinking ahead. He convened a set of confidential meetings among what he called the "workhorse group." The group included reform advocates and health care trade groups; the idea was to create inside-Washington momentum for reform while developing a proposal that at least some, if not all of the groups could support.

From the start, Kennedy thought Baucus was the key to passing legislation—and not just because of the Finance Committee's jurisdiction. It would take 60 votes to break a filibuster. There was no way to get there without winning over conservative Democrats and, most likely, a few Republicans—the kind Baucus could bring. Baucus, in turn, would ultimately need Kennedy to validate his work on the left. It helped that what the two men lacked in ideological affinity they made up for in generational identity. "There are very few institutionalists left in the Senate," says Jon Selib, Baucus's chief of staff. "Very few members

ests. But Obama also wanted to pass monumental legislation. And it wasn't long before the tension between the two began to emerge.

Obama's budget message had signaled his intention to push forward on health reform. But it didn't actually establish spending guidelines for Congress. The real budget, the one Congress uses as its outline for appropriating money over the course of the year, is strictly a Capitol Hill document. The two houses each pass a version, work out a compromise, and then approve it—all without presidential signature. That meant Obama had to deal with Kent Conrad, a conser-

Max Baucus pushed legislation to the right. But his early commitment to reform made enactment possible.

remember the Russell Longs and the way deals were made in the Senate for a long time. Ted Kennedy and Max Baucus are two of those folks."

The two started meeting regularly and, by summer, the chairmen were aiming to produce one common piece of legislation. That hope subsided with Kennedy's infirmity, but Baucus didn't back off—not even when that fall's financial crisis gave him the perfect excuse to relent. On the contrary, Baucus redoubled his efforts and announced as his goal the production of a white paper sketching out what legislation should look like. He published the 89-page document in November 2008, less than two weeks after Obama's election. And some of Obama's advisers used it to press their case for moving ahead: It was proof, they said, that Congress was ready to go.

But, as pleased as Obama's health team was with the white paper, they also felt trepidation. Baucus's staff had been briefing Obama's team through the fall, but more to keep Obama in the loop than to seek his advice. It didn't matter substantively: The white paper framework had the same architecture as the Obama plan. But Obama aides worried that the point of the paper wasn't simply to show that Baucus wanted to pass reform. It was to show that Baucus wanted to own it.

Inside Game

BARACK OBAMA had promised to change the way Washington does business. No more negotiating in the anterooms of Capitol Hill. No more crafting bills to please corporate inter-

native Democratic senator from North Dakota who was in charge of the Budget Committee and who feared health reform would be a sinkhole for taxpayer money. To get his support, a bill couldn't be too big—and it had to pay for itself.

Conrad, like other conservative Democrats, was also insistent about finding at least some token Republican support. And that shaped his position on a key procedural question. Under what is called the "budget reconciliation process," the Senate can pass a bill without the threat of filibuster. That means a simple majority of 50 plus one—rather than 60—can pass legislation. When the budget committees write the budget, they get to indicate what legislative measures will fall under these reconciliation guidelines.

Progressive activists and pundits talked openly of using reconciliation to pass an entire health care bill. The Democrats had only 58 seats at that point, since Arlen Specter was still a Republican and Al Franken's victory remained in dispute. And support from conservative Democrats like Ben Nelson was far from certain. But parliamentary guidelines meant that passing the bill through reconciliation would be difficult, and moderate Democrats complained that the move seemed too partisan. Conrad was among the loudest critics, all but precluding the possibility.

Obama still hoped for a bipartisan win. But he and Majority Leader Harry Reid wanted the option of reconciliation, just in case 60 votes proved elusive. Obama appealed to Conrad on substance—dispatching Peter Orszag as emissary and then telling Conrad of his commit-

ment to reform that paid for itself. He also showered presents on Conrad's dog, a white bichon frise named "Dakota," which Conrad sometimes totes to his office. The doggie gifts even came with a personal note—"Rahm idea, Obama execution," says one administration official.

But, in a sobering lesson about the realities of Congress, Conrad brought up a local issue. Even as he was demanding Medicare spend less money overall, according to multiple administration and congressional sources, Conrad sought assurances that Medicare would start paying more money to some of North Dakota's hospitals. Specifically, Conrad wanted the government to pay the hospitals as much as it paid hospitals in Minneapolis, the nearest big city. The sources say Conrad came away thinking he had a deal, while the White House didn't. (Neither party would comment officially on their negotiations.) Conrad, who has long claimed his states' hospitals are underpaid, eventually got his payments anyway: The final Senate health care reform bill raised reimbursements for hospitals in five "frontier" states with low population density. North Dakota is one of them. Liberals who knew about Conrad's demand were furious: He loved to lecture about fiscal responsibility, except when federal money happened to serve his own parochial interests.

ONE OF OBAMA'S favorite tropes on the campaign trail was the story of Billy Tauzin, a Louisiana congressman who became head of the Pharmaceutical Research and Manufacturers of America (PhRMA) before the ink was dry on the Medicare drug bill he'd helped write. "That's an example of the same old game playing in Washington," Obama had said during the campaign. "I want to put an end to the game playing."

But, weeks after the 2008 election, one of the first people to approach the new administration was, sure enough, Billy Tauzin. In 1994, the drug industry had helped bankroll the campaign to kill Clintoncare. But, like the rest of the health care industry, it seemed to be adopting a different posture this time. PhRMA and other trade groups had been meeting regularly with pro-reform counterparts, in a series of private sessions convened by Ron Pollack, an earnest universal health care proponent who led the group Families USA. They'd also been part of Kennedy's workhorse group. They weren't committing to anything; they could always turn around and oppose reform, as many initially enthusiastic groups had done in 1994. But even some drug com-

pany CEOs thought that they were better off shaping legislation than fighting it.

Obama's advisers encouraged that view. Although wary of how the industry wanted to shape legislation, they thought they couldn't win if most major trade groups lined up against them. During the transition, Tom Daschle agreed to meet with Tauzin and PhRMA's chief lobbyist, Bryant Hall—who, conveniently enough, had offices in the same building as Daschle's law firm. PhRMA had worked with Democrats on expanding the state Children's Health Insurance Program (CHIP), and, the two lobbyists explained, the group could help with comprehensive reform, too. But PhRMA's tolerance for pain was limited. The drug industry didn't want to oppose reform, they implied, but it was prepared to do it if the terms seemed too harsh.

Daschle understood. Although he offered no specifics, he made clear Obama was willing to talk if the industry was willing to be constructive—a message Obama himself had made at the March White House summit. "We met with virtually every stakeholder during the transition," Daschle says. "Our message was similar: 'Join us. Don't oppose us.' Details would come later."

Daschle, though, wouldn't be able to see the negotiation through. Obama had tapped him to run health care reform partly because of his Washington savvy. But, in recent years, Daschle had parlayed that knowledge into a lucrative career of advising corporate clients. When investigators on Baucus's Finance Committee turned up evidence that he'd received more than \$100,000 in free transportation and owed considerable back taxes, Daschle had to withdraw his nomination—effectively freezing the conversation while Obama searched for a replacement.

But PhRMA was engaged in other negotiations, as well. In January, SEIU's Dennis Rivera and Karen Ignagni of America's Health Insurance Plans (AHIP) started talking about a joint industry effort to pledge savings, as part of reform. They met in Washington hotel conference rooms, rather than one of their respective headquarters, in order to avoid attracting attention; as the discussions moved forward, they invited other groups, including PhRMA. They also reached out to the White House, where Daschle's successor, Nancy-Ann DeParle, encouraged them to take the effort public with a letter and appearance at the White House. The administration thought it would legitimize one of their main arguments: If even the health care industry

thought reform could save money, how crazy could the idea be? It'd also make it harder for these groups to fight reform as specifics emerged.

After painstaking, line-by-line negotiations over a joint letter, the groups agreed on a figure—\$2 trillion over ten years. But confidentiality was essential, because the parties to the agreement faced very complex internal politics. Some hadn't taken the idea to their full organizations yet; the idea was to inform them over the weekend, right before the Monday event. But the story got out early, apparently because a White House official leaked it. It generated a day of positive, if slightly confusing headlines about the progress of reform and potential to save money. But it also sparked a near-revolt within the American Hospital Association (AHA), whose president, Rich Umbdenstock, hadn't even told his full leadership the event was forthcoming.

Member hospital executives started screaming that the cuts were too steep. Umbdenstock, in turn, said the letter misrepresented what the groups had pledged. "We thought they might justoust the president of AHA," one participant in the negotiations says, "because he seemed to be in such a difficult place. ... They thought he was negotiating away the store."

PHRMA DIDN'T recoil in the same way—in part because the group had begun talks with the Finance Committee. This was the kind of deal-making Baucus relished, so he was direct about his position. Armed with estimates from Tony Clapsis suggesting that the drug industry stood to make up to \$100 billion over ten years if reform expanded coverage, Baucus asked the industry to reduce its revenues by about the same amount. PhRMA's lobbyists said that was high, but they were willing to talk.

The serious negotiations began after the White House event, in a handful of lengthy meetings in Baucus's office. DeParle was there to represent the administration, along with deputy chief of staff Jim Messina, who had been Baucus's chief of staff and whom the Montana senator once called a second son. Tauzin and Hall led the PhRMA team and worked with five, then six, drug company CEOs. The CEOs represented the diversity of PhRMA members—perhaps making any final deal more acceptable to the organization's whole membership.

The CEOs came in with serious questions about whether a deal would hold on the Senate floor and in conference committee. The White House, for its

part, was pushing for more than PhRMA wanted to give. At one point, when it looked like the two sides were near agreement, DeParle's cell phone rang. It was Rahm. After taking the call outside, she announced that PhRMA had to offer drug rebates to more seniors; Emanuel, it seems, was nervous about reform's poll numbers among the elderly. But the White House was also anxious to close the deal. The perception of progress and inevitability was crucial to the administration's strategy: It would help persuade wavering groups and members of Congress to support the bill, or at least dissuade them from opposing it. Reformers frequently used the saying, "Get on the bus or get run over by it." But that only made sense if the bus kept moving.

Eventually, the two sides agreed on \$80 billion, some of which represented reduced government spending on public insurance programs. (The rest represented money individuals would save, through cheaper drug purchases.) PhRMA also pledged to support reform openly, by financing pro-reform ads. The ads might not be that helpful, but dollars spent advocating for reform were dollars not spent opposing it—and that, aides would later say, is what mattered the most. In return, the White House and Finance agreed not to write health care reform in a way that would further cut into drug industry revenues—a promise that implicitly took off the table such ideas as allowing the reimportation of drugs from Canada.

Obama announced the deal's broad outlines from the White House, this time bringing out an official from AARP, not PhRMA, to stand at his side—and divulging very few details, even privately. A few weeks later, a House committee tried to limit the exclusive selling period for biological drugs to five years. Industry lobbyists defeated the measure easily. But the mere attempt spooked some PhRMA members, enough that Tauzin decided to give an interview to *The New York Times* revealing for the first time some of the deal's outlines. Messina confirmed to the *Times* that the deal was valid, and, in a private meeting, Rahm Emanuel reassured the drugmakers that the White House would push for it. "We are in," Emanuel said, as *The Washington Post's* Ceci Connolly has reported.

Some subsequent Wall Street analyses suggested drugmakers, overall, will profit from reform. But many PhRMA executives continue to believe they gave up too much—and that the industry will end up worse off for it: "Go back to the CEOs who helped broker this thing, and



Nancy Pelosi's members were furious about the deals Obama had cut.

there's still a lot of grimaces," says one industry lobbyist. The lobbyist also notes that PhRMA had the power—and connections—to make its view stick. "If [we] turned against this deal, there was no way to pass this bill," the lobbyist says. "Until the very end, we could have blocked sixty votes in the Senate."

House Money

IT WAS Henry Waxman, chairman of the House Energy and Commerce Committee, who had tried to get tough with the manufacturers of biological drugs. He was thrilled to be pursuing health care reform, a lifelong crusade, and he was an unabashed fan of the president. But few people in Washington were more upset about the deal Obama and Baucus had cut with the pharmaceutical industry—and the way it seemed to undercut the progress Waxman and colleagues were making.

Such progress had not been foreordained. While Speaker Nancy Pelosi committed herself to health reform early, her lieutenants had reservations. After the presidential election, Jim Clyburn, the majority whip, told CNN he thought it better to concentrate on incremental reforms. Charles Rangel, who was then chairman of the Ways and Means Committee, asked Baucus during their weekly lunch why on earth he was spending so much time on health care—there was no room for tackling comprehensive reform, he said.

The House, no less than the Senate, had its own warring chieftains. Three committees laid claim to jurisdiction over health care: Rangel's Ways and Means, Waxman's Energy and Commerce, and George Miller's Education and Labor. But, more than any recent Democratic leader, Pelosi had asserted her control over the institution, easing out unfriendly chairmen (John Dingell) and replacing them with loyal allies (Waxman). She also believed in deadlines. When she made clear her ambitious timetable, the three chairmen realized they'd have to divide the work of health care legislation. They'd collaborated like this on the Recovery Act—proof that once-contentious relationships, particularly at the staff level, were improving. They started calling themselves "Tri-Com" and, eventually, got their own tote bags, complete with a Tri-Com logo.

Of course, cooperating was one thing. Complying with Obama's imperative to cut costs and make reform pay for itself was quite another, particularly given the way calculating cost works on Capitol Hill. Experts had identified ways to save money in medical care—like creating electronic medical records or punishing inefficient hospitals with lower Medicare payments. But the official arbiter of costs in Washington is the CBO, whose skeptical economists were unwilling to certify that such changes would significantly reduce medical spending.

Obama's advisers had their own ideas about cost control, chief among them an independent commission that would help calibrate what Medicare pays for

AP PHOTO/EMAN UCCI

treatments. The idea was to take those decisions out of Congress—which, naturally, didn't sit well with many members. The administration also seemed intent on keeping the price tag of reform in the neighborhood of \$1 trillion. It had identified about that much in new revenue and spending cuts to offset the amount, which was nice, but many House members felt it was still not enough to finance an appropriately protective insurance system.

Eventually, the House chieftans decided the best strategy was to follow their instincts, keeping within hailing distance of the administration's guidelines but not strictly hewing to them. That meant, among other things, extracting more money from the drugmakers. "I expressed my unhappiness with those deals," Waxman says, "and I made clear I didn't feel bound by them." And, by June, the Tri-Com had released their bill. But, while the Obama administration said only good things in public, the CBO was less sanguine when it issued its estimate in July. It projected that the bill would run a deficit of more than \$200 billion. One reason was that the House had gotten cute with the numbers: In the final year of the ten-year window, money going out was higher than the money coming in. That meant deficits might be even bigger in future years.

Members of the Blue Dog coalition and other more conservative House Democrats grew restless. They cared less about expanding and strengthening insurance coverage—which, by all accounts, the Tri-Com bill did well. They were also angry about a climate-change bill that Pelosi and Waxman had brought to a vote in early summer, exposing them to political blowback. "All of the members who had voted for that bill from marginal districts were getting the shit kicked out of them and getting no backup from environmental groups," says one senior Democratic House aide. "There was a guy at a caucus who stood up and said, 'Nancy, there's an ad in my district, and it's with you and me, which would be nice, but we're both being struck by lightning.'"

The tension finally blew up in Waxman's committee—in which Southern, rural, and more conservative Democrats had more representation and in which Waxman, for all of his smarts and savvy, had less crossover credibility than Dingell once did. The flash point was the public insurance option. Leadership and House liberals wanted a "robust" version of the public plan, one that paid for medical care at or near the rates that Medicare did. An early CBO esti-

mate suggested that a public plan with (slightly modified) Medicare rates could save the government around \$150 billion. But that money would come out of the health care industry, which prevailed upon ideologically sympathetic (and campaign-donation-dependent) lawmakers to intervene. They blocked a bill until Waxman fell back to a plan that would negotiate payments with the providers of care just like private insurers did.

With that concession, Waxman got his bill out of committee, just as Miller and Rangel had done days before. It would have been an occasion for celebration among reformers, if they weren't so worried about the Senate.

Baucus Agonistes

MAX BAUCUS was in a familiar situation: Getting lectured by angry members of his own party. But, this time, it wasn't just Senate liberals. It was the majority leader. And the speaker of the House. And the president. They were meeting in the Oval Office, and the subject was Baucus's halting progress.

Pelosi thought Baucus's pursuit of Republicans was pointless; they wanted to kill the bill, period, and, by dragging out the negotiations, they might just succeed. Reid, though generally inclined to give his committee chairmen room, was coming around to the same conclusion. Obama was, too. Winning over Olympia Snowe was one thing; the administration had zeroed in on the Maine Republican as its best hope for Republican support. But Chuck Grassley, the senator on whom Baucus was spending the most energy? Everybody but Baucus was giving up on him.

Baucus and Grassley were kindred souls. Like Baucus, Grassley had a penchant for awkward public expression. After he started his own Twitter account, his impulsive, frequently incomprehensible missives fast became the stuff of political legend. In June, during a presidential visit to Europe, Obama made statements urging the Senate Finance Committee to quicken its pace. Grassley tweeted back: "Pres Obama while u sightseeing in Paris u said 'time to delivr on health-care' When you are a 'hammer' u think everything is NAIL I'm no NAIL."

Grassley also had an uneasy relationship with his own caucus, because, like Baucus, he sometimes crossed party lines. In 2007, Grassley had worked with Baucus on a bill expanding CHIP, the children's health insurance pro-

gram, which Congress had created in 1997 and which was due for reauthorization. The new Congress in 2009 wanted to make expansion, which Bush had vetoed, a first order of business. But Democrats wanted to include coverage for the children of legal immigrants. Grassley voted no—and seethed. According to Chris Jennings, the highly regarded Democratic health care strategist, "Fairly or not, he thought the Democrats overreached and reneged on his agreement with them on the policy, making him look bad with his Republican colleagues. The Republican caucus said, 'See, they burn you every time. You're so naïve, Chuck.'"

Grassley didn't blame Baucus personally—and told his friend that he wanted to keep working on reform. But now, he wanted some assurance that, on the major issues, the deal he cut in Finance would withstand pressures from the left on the Senate floor and in conference negotiations with the House. And he didn't want to be alone. He needed to be one of several Republicans voting for the bill—and Snowe, whom many Republicans regarded as too liberal, didn't count.

Reaching across party lines was Baucus's specialty—and, early on, he had Obama's enthusiastic support. For Obama, bipartisanship was partly a matter of principle. He had pledged to work with Republicans, and, at least early in the term, he believed that a handful of Republicans would be willing to join him on legislation vital to the country's future. Obama also understood the math—and that the surest path to 60 votes went through Finance. But, with the Republican leadership making clear it wanted no piece of meaningful health care reform, few Republicans were interested in negotiating seriously. The logical target would have been Ted Kennedy's old friend, Orrin Hatch, who had also collaborated on CHIP. But Hatch was openly blasting Kennedy's HELP staff for pushing for a "partisan" bill, in a way their ailing boss supposedly would not have, so Baucus turned to Mike Enzi of Wyoming. The thinking was that Enzi, like Hatch, sat on both Finance and HELP—and was a Kennedy friend, too.

Enzi told Baucus he was willing to talk, and, based on that agreement, Baucus convened what eventually became known as the "Gang of Six"—Enzi, Grassley, and Snowe for the Republicans, Baucus, Jeff Bingaman, and Kent Conrad for the Democrats. But Enzi proved early he was an unlikely target. ("Enzi and Kennedy are friends, great, they both drank," quips one senior administration official.

"That doesn't mean he's going to make a deal.") Baucus himself learned this the hard way in late July. Baucus asked the Gang of Six if, in lieu of an elusive agreement on legislation, they'd sign a letter attesting to progress and promising official hearings by September 15. Enzi refused.

That left Grassley, whose behavior was becoming erratic. Grassley stood his ground during heated Republican caucus meetings, senior congressional aides say. As Enzi's interest waned, Grassley's staff even joined Baucus's on a quixotic hunt for Republicans willing to support reform on the floor. But it wasn't just Republicans in Washington going after Grassley. It was Republicans back home, too. As the Gang of Six negotiated, Iowa conservatives began threatening to back a primary challenge if Grassley ever voted for health reform. By August, Grassley was parroting Sarah Palin's agit-prop about death panels. "You have every right to fear," he told some constituents. "We should not have a government program that determines if you're going to pull the plug on grandma."

Reset

BARACK OBAMA, the law professor, was acting like a prosecutor. He'd invited Grassley to the Oval Office, to talk about the senator's concerns. But he was using the occasion to confront Grassley about his latest statements. "Tell me what amendment you want, tell me what language you want," one administration official recalls the president saying. And then, when Grassley couldn't point to anything, the official says the president reminded Grassley that the amendment on end-of-life counseling had come from a Republican, Johnny Isakson of Georgia, and simply paid for professional advice when people wanted it. But Obama's mind was already wandering to the new strategy he'd have to adopt. The first seven months of his presidency had been a test of his belief in civility and bipartisan cooperation. Now, he had the results. They were not encouraging.

Perhaps nothing epitomized the unmooring of the debate from reality better than the treatment of Ezekiel Emanuel, a prolific bioethicist and oncologist (and Rahm's brother) who was advising Orszag at OMB. Right-wingers pulled out some stray quotes, mashed them together with the end-of-life counseling controversy, and decided that Emanuel was "Dr. Death," intent upon forcing doctor-assisted suicide on the sick. In fact, the highly respected Emanuel had written a

famous article for *The Atlantic* arguing against euthanasia. More respectable conservative intellectuals, like former McCain adviser Gail Wilensky, vouched for Emanuel and decried the distortions. Nobody could hear her above the screams of Fox News pundits.

Worse still, the White House seemed powerless to change the conversation. Some administration officials would later blame Congress, because of its glacial pace. "We didn't actually have a product to sell or defend," according to one senior official. Some would acknowledge internal disorganization. There was no official media "war room" for most of the summer, while rivalries between policy advisers (particularly DeParle and Orszag) diverted aides' attention.

It didn't help, many critics said, that the pitch had become so bloodless. In a press conference designed to boost momentum during July, Obama offered detailed disquisitions on the need for more comparative effectiveness studies—but saved his emotion for a swipe at the Cambridge cops who arrested his friend Henry Louis "Skip" Gates Jr. Inside the Oval Office, though, aides saw a different side of the president. David Axelrod remembers briefing Obama on some grim poll numbers in June, warning that "these numbers are pretty discouraging—there's a political cost to this." Obama agreed. Then he described a 36-year-old woman with cancer he'd just met during a trip to Wisconsin: "She's married, has insurance, and she's still going broke. She's absolutely beside herself because she feels like she may not make it and that she'll leave her family with this huge debt." With that, Obama patted Axelrod on the shoulder and showed him to the door. "Let's keep fighting."

And that, to Obama, meant becoming a lot more aggressive—starting with a nationally televised address in September, one that would help correct the distortions, remind Americans of the bill's real contents, and stiffen the spines of nervous Democrats. That last part was important given what many Democrats had heard and seen during the August recess. Conservative activists had flooded town meetings, in a combustible mix of media hype and genuine grassroots energy. The Chamber of Commerce and several insurance companies started pouring money into anti-reform advertising. But, in the wake of Kennedy's death on August 25, at least some Democrats were also thinking about the party's historic principles.

Fox opted against carrying Obama's speech live. The rest of the networks

showed it—and polls suggested it was a hit. "I am not the first president to take up this cause," Obama announced, "but I am determined to be the last." One by one, he dispensed with the "bogus claims spread by those whose only agenda is to kill reform at any cost." The death panel charge, he said, "would be laughable if it weren't so cynical and irresponsible." As for the idea that his reform would subsidize coverage for illegal immigrants, Obama said, "this, too, is false." When Joe Wilson, a South Carolina Republican, interrupted that line to shout, "You lie!" it reminded Democrats of the town-hall bullying—and, according to insiders, emboldened them to press ahead. "It was so over the top," says Chris Jennings. "The ultimate irony is that the opponents' assaults succeeded in unifying Democrats as much as it unified Republican opposition."

An even more important development happened before the speech. The administration told reporters that, along with the speech, it would unveil its own proposal, just to make clear what provisions it supported. Quietly, it was doing more than just drawing up a memo; it was writing an entire bill, in legislative language, in case Baucus wouldn't move. Reid, meanwhile, delivered his own message to Baucus: If you don't get a bill out of your committee soon, I'll go around you and simply introduce a bill on the floor. Feeling the pressure, Baucus held the second of two conference calls with the Gang of Six: If he didn't move now, he explained, Finance might end up out of the picture altogether. Baucus announced he was starting hearings in mid-September—and the White House decided to leave its bill where it was, on a policy wonk's hard drive.

MOVING AHEAD on legislation didn't mean that legislation would pass, particularly given the debate about dollars. Baucus had been looking at some proposals in the range of \$700 to \$800 billion—too little, in the opinion of most experts, to pay for providing most people with a decent benefits package. One reason was that he was struggling to come up with money to pay for it. He'd wanted to finance his package by curbing the tax preference for health insurance, which CBO director Doug Elmendorf had said was the surest way to reduce the overall cost of care. But, in early summer, Reid had told Baucus that Senate Democrats would not support such a move. Reid seemed to be conveying a message from the White House—and that had set back

progress, since Baucus didn't have an alternative funding source that he could sell to his committee.

In the September speech, Obama sent two key signals about how to solve these problems. His first was to specify a figure for the overall cost of the health care plan. Reform, he said, should cost somewhere in the neighborhood of \$900 billion over ten years—enough, by administration and CBO estimates, to cover 30 to 35 million people or something resembling comprehensive reform. Then, Obama endorsed an idea, first floated by Senator John Kerry, to tax insurers for the provision of expensive plans. Economists believed it would have the same effect as curbing the tax break on insurance, but, because the tax ostensibly fell on insurers, it was more palatable politically.

Baucus still had other problems—particularly on his left, where two Democrats with legitimate claims on the health care issue, Jay Rockefeller and Ron Wyden, wanted a chance to introduce their ideas. (Rockefeller wanted a more generous package; Wyden wanted amendments to offer workers more choice of insurance.) Then, two days before the vote, the insurance industry released a study purporting to show that reform would hike premiums. The study, from PricewaterhouseCoopers, was full of loaded assumptions—and even Democrats normally friendly to the industry blasted it. “I think what solidified the Democrats was the publication of the AHIP report,” says one senior aide who was involved with the Finance Committee negotiations. “It was the single dumbest move that I think the insurance industry did.” Every Democrat on the committee ended up voting for the bill. So did Olympia Snowe, although she made clear her vote on a final bill remained in doubt.

Floor Exercises

OBAMA'S ANNOUNCEMENT, during the September speech, that reform should cost around \$900 billion had helped break the Finance Committee logjam. But it also undercut the House, whose coverage expansion provided stronger guarantees against financial risk and, as a result, was well over \$1 trillion. During the spring and summer, the House committees had heeded Obama's instruction to stay fiscally responsible—trimming back their ambitions and raising more money to cover the new outlays. Now, Obama was forcing them to scale back even more. The

administration hadn't even warned the House that the figure was in the speech. Senior Democratic staffers say that Pelosi found out about it the way the rest of her chamber did: On the floor, when the president spoke. She betrayed no anger in public but expressed plenty to the White House in private—and won some room to maneuver when administration officials clarified that \$900 billion was the net figure, not gross.

Soon, though, it became clear Pelosi wouldn't get 218 votes without some kind of compromise on abortion. The committee bills called on insurance companies to separate out funds used to pay for abortion services. Opponents of abortion rights, led by the U.S. Conference of Catholic Bishops, said the distinction was meaningless and wanted an outright ban on abortion procedures in the new insurance exchanges. Bart Stupak, a Michigan Democrat and opponent of abortion rights, was leading a group of Democrats who agreed.

In the spring, the committee chairs and leadership were more confident they had the votes to pass reform without Stupak's assent. But reform's popularity had slipped, and, a day before the vote, Pelosi still didn't have 218. As the *Post's* Ceci Connolly has reported, Pelosi held a series of conferences with the Stupak group and the women of the Demo-

Obama grilled Republican Senator Chuck Grassley: Show me where this bill talks about pulling the plug on grandma?

cratic caucus. Eventually, she confronted the women with the grim reality: She had to make the deal with Stupak or reform would fail. Pelosi teared up at the meeting, and, that night, Rules Committee Chair Louise Slaughter skipped her own committee hearing rather than be present for the insertion of the Stupak language.

With the abortion deal in place, the daylong House debate played out as ritual—with members giving short, canned speeches. Late into the evening, the House passed the reform bill with 220 yes votes, including Republican Ahn “Joseph” Cao, who'd switched to yes after the Stupak compromise. Staff would later say Pelosi had a handful of extra votes in her pocket if she needed them.

OVER IN THE Senate, liberals were just as angry—and they focused their efforts on the public option. All year long, the administration had sent mixed signals: Obama would

say he supported the idea, but he stopped short of calling it a make-or-break issue. Privately, aides readily conceded the idea had little chance of passing—and many figured that Reid would simply drop the public option on his own, when he blended the Finance and HELP bills. But, in late October, Reid made clear during a White House meeting that he had no such intention. Liberals were already seething over sops to the right Baucus had made; if Reid compounded the problem by eliminating the public plan, they might bolt.

According to sources familiar with the conversation, the president merely listened and asked pointed questions. As Jonathan Alter recounts in his new book, *The Promise*, Obama was skeptical: “Obama was on record favoring a public option, but his first priority was a bill. And he still thought the best way was to win over Snowe.” But Reid said he knew his caucus: His was the best way to 60.

Snowe was unhappy—as much with the process as the outcome, according to people familiar with her thinking. Baucus had courted the famously deliberative Maine senator carefully, talking with her for hours about every last item on her long list of concerns. The administration had also blanketed her with attention. Obama hosted her in the Oval Office multiple times. Peter Orszag even

had dinner with her while traveling in Maine. But patient, casual conversation is not Reid's style. He likes to get down to business, and, when he's through, he moves on quickly. He's been known to hang up the phone abruptly when he finishes a conversation, without bothering to say goodbye. When Reid prepared to release the merged bill, Snowe felt like she was no longer part of the process. But even those within the administration who had defended the pursuit of Snowe had grown weary of negotiating with her. During the Finance markup, Baucus had addressed nearly every one of her concerns, but he didn't learn until the day of the vote that she would support the bill. Obama and Reid had gone through her latest list—and were amenable to most of it. But, again, Snowe wouldn't commit. Had Reid waited, many say, he'd still be waiting now.

Instead, Reid focused on the centrists in his own caucus—picking them off one

at a time until he got to Joe Lieberman, who had made clear he wouldn't support a public option. After a maddening back-and-forth in search of a compromise, during which Reid felt double-crossed by Lieberman, Reid finally shelved the public option once and for all—but only after Lieberman promised to vote yes. That left Nelson, with whom negotiations were far more straightforward. Nelson gave Reid a list of “concerns.” Reid, working with the White House, quickly approved several of them, including higher Medicaid payments for Nebraska. No other state would get such treatment, but, Reid figured, that's how bills get through Congress.

After Republicans abandoned a plan to stall during the voting process, Reid called the final vote around 7 a.m., the morning before Christmas. Reid, exhausted from his marathon negotiating sessions, accidentally voted no before voting yes and collapsing into his chair. The ailing Robert Byrd of West Virginia, wheeled in for the occasion, announced he was voting yes “for his friend Ted Kennedy”—while Kennedy's widow Vicki watched from the gallery.

Around Washington, Democrats celebrated—and made plans to cut short long-scheduled vacations, so that they could start the final negotiations between the House and Senate. Rahm Emanuel checked in with the president, assuming he would sign off on that timeline. No, Obama said. Everybody is exhausted and that's not conducive to negotiation. Wait until after New Year's.

Mass. Panic

NANCY PELOSI was in the Old Executive Office Building when one of her advisers gave her a message: Obama wanted her next door, in the White House. Martha Coakley was about to lose the election for Ted Kennedy's old seat and, with it, the Democrats' filibuster-proof majority. Obama had summoned Harry Reid, too, and together they discussed options. Exactly who said what depends on who's telling the story, but a few things seem clear: They all wanted to keep pursuing comprehensive reform, but they couldn't agree on how. And they were all frustrated—with the political situation and, increasingly, with each other.

It didn't help that the original negotiations over merging the House and Senate bills had left nerves frayed. From

afar, the bills looked similar: They had the same basic structure, the same basic scope, and the same kind of regulations. But, up close, their differences, starting with the choices for raising money, looked a lot bigger—and Pelosi, speaking for a caucus that already felt bloodied, hated giving every inch. Obama had personally taken charge of the negotiations, hauling everybody into the West Wing: “The president understood the issues better than many if not most House and Senate members,” said an impressed Henry Waxman. But, at one point, he got so exasperated he got up and left the room, leaving Rahm to knock some heads.

The House and Senate were close to agreement when the Massachusetts special election interceded. By the time Obama was on his way to Boston in a last-ditch effort to change the outcome, his advisers had started talking about contingencies. But the election was more devastating than they had feared, the reaction among Capitol Hill Democrats even more panicked. On the night of the election, prominent House Democrats Barney Frank and Anthony Weiner told MSNBC they thought health care reform was effectively dead. According to senior Democratic aides, Pelosi figured that Massachusetts left her with a core of only about 180 Democrats sure to vote with her. She'd have to pick up the rest from a group that was divided among themselves.

One of Pelosi's first moves was an appeal for calm. Take a breath, she told her members, and don't say anything publicly that might set off a stampede. In caucus meetings, she listened—and then, ever so slowly, she started to push. “After Massachusetts, there was a big Democratic caucus, everybody was trashing health care, and you left the room thinking, ‘This is just never going to happen,’” one senior Democratic aide recalls. “And then, the next caucus, she's talking about how we're going to do it. ... I thought there was no way in hell.”

But, if Pelosi projected confidence, she had a major worry: Back at the White House, a debate over whether to proceed with comprehensive reform was playing out one more time. Rahm Emanuel was, once again, proposing to find a quick deal on a smaller bill that would insure just kids. And he wasn't just talking it up internally. He'd discussed the idea with members of Congress, and, in February, *The Wall Street Journal* published a story about it. Whether Rahm

was merely exploring the option or actively shopping it, Pelosi thought all the talk of an “eensy weensy bill,” as she called it, was undermining her efforts. She told the administration she needed Rahm to cease and desist.

THE INTERNAL DEBATE was no secret at the White House, and, particularly in the first two weeks after Massachusetts, many administration officials assumed that health reform really was “Dead, DEAD DEAD,” as one put it to me in an e-mail. Officials also had their own frustrations with Pelosi: Once the smoke had cleared, all sides realized the only way forward was to have the House pass the Senate bill, and then amend the Senate bill using the reconciliation process. But Pelosi kept insisting the Senate go first, something administration officials thought unworkable as politics and policy. Pelosi had asked Obama and Reid not to pressure her publicly, lest they alienate more members; they were complying. But, privately, many administration officials feared Pelosi wouldn't budge because she couldn't—that votes in the House would never materialize.

But, every time this debate reached the Oval Office, the president came down in the same place: He was elected to do the big things, and he wasn't ready to give up. He told his cabinet, apparently referring to a Tom Toles cartoon in *The Washington Post*, that they were on the two-yard line—and he didn't want to settle for a field goal. At a town-hall meeting, he gave an unscripted, 20-minute soliloquy on the importance of reform; at a House Republican retreat in Baltimore, he showcased Republican obstructionism and demonstrated the deep, intricate knowledge of policy that he memorably lacked three years before, at that Las Vegas SEIU forum.

The Baltimore session went so well he called for another, more formal summit—with Democrats and Republicans. At that event, which took place at Blair House in late February, the Republicans acquitted themselves far better. But the summit itself was less important than the time it bought. “It just froze the game,” says John Podesta, president of the Center for American Progress. “Everybody just decided, ‘OK, let's see what happens a month from now [at the summit].’ It stopped people from jumping ship.” (It also gave reformers a chance to publicize news about huge premium hikes by California's WellPoint insurance.) Pelosi used the time to work on her members, while House staff—coordinating with their White House and Senate counterparts—



quietly figured out how to write a bill that would fix the Senate package within the intricate rules of reconciliation. Reid worked his caucus, urging them to give Pelosi time and making sure 51 members would be ready to approve the reconciliation bill when the time came.

There were familiar political hurdles, like the tax on benefits, which had become the critical piece for winning CBO validation of cost control. Obama agreed to scale it back, and then told the unions they'd have to take it. In the end, once again, it came down to abortion, because the Senate's language was less restrictive than what Stupak had won. John Dingell reminded Stupak, to whom he'd been a mentor, how important reform was. Stupak relented, accepting an executive order that merely affirmed existing bans on taxpayer-funded abortions. By this time, House leadership and the White House were working as a team. Insiders from both camps observed that Obama and Pelosi seemed to be reinforcing one another—and, together, conjuring up a political miracle.

The final weekend played out like a microcosm of the debate: Conservative protesters descended upon Capitol Hill, marching on the lawn and through the House office buildings, hurling racial and homophobic epithets, and—in one case—saliva at Democrats. But the Democrats responded by closing ranks. When Pelosi gave her closing speech, the entire caucus rose in ovation. “We will be joining those who established Social Security, Medicare, and now, tonight, health care for all Americans,” she proclaimed. As Kathleen Sebelius, secretary of health and human services, watched from the speaker's box and, nearby, Nancy-Ann DeParle hoisted her son onto her lap, electronic scoreboards tracked the vote—214, 215, and, finally, 216. A spontaneous cheer erupted from the House floor: “Yes we can! Yes we can!”

What Change Looks Like

BACK AT THE White House, Obama watched the results with staff, exchanging hugs and high fives when it was all over. In a press conference just before midnight, he announced, “This is what change looks like.”

To plenty of Americans, that was precisely the problem. The process of passing the law seemed ugly—there was plenty of “business as usual”—and the final product has flaws, too. The new law will not cover everybody, and, in the near future, neither the government nor

the country will be spending less money on medical care. But it will mean insurance coverage for an additional 32 million people, as well as more reliable coverage for people who already have it. The extra spending it will require is a rounding error; and, within a few years, health care costs will be rising more slowly than they would have otherwise. History shows that, over time, we tend to make these laws better—by amending them with new legislation and strengthening them with regulation, something the Obama administration has already begun. As Senator Tom Harkin memorably put it in December, health care reform isn't a mansion. It's a starter home, with a solid foundation, a strong roof, and room for expansion.

The basis for the law is the idea that everybody should be able to get the medical care they need without enduring fi-

when they deploy hypocrisy, demagoguery, and dishonesty. But the institutional constraints on legislation—the technical challenges of reconciliation, the accounting standards of the CBO, the nature of campaign finance—make the enactment of sweeping legislation nightmarishly difficult. Liberals frustrated with the Affordable Care Act's final shape ought to concentrate on changing those facts of political life, by reforming institutions of government, starting with the filibuster, and building the kind of grassroots movement that can dilute the awesome power of money in politics.

None of which is to say Democratic leaders didn't make mistakes—or approve trade-offs many of us will question for years to come. But that's a lot easier to say in hindsight. “People like to second-guess,” says Neera Tanden, who was an adviser to Sebelius, “but, at the

Emanuel was proposing a quick deal on a smaller bill. Pelosi told the White House she needed Rahm to cease and desist.

nancial calamity—and that government must act, aggressively, to make that happen. Conservative opposition to this says more about the right than it does about health reform. The Affordable Care Act's intellectual lineage includes strong conservative influences; its coverage scheme is virtually identical to the one in Massachusetts, which, at the time, a Republican governor and conservative intellectuals supported. Liberals, of course, wish health care reform were more liberal—that, if it couldn't be single-payer, then at least it could be bigger, stronger, and have a public option. As the argument goes, if only Obama, Pelosi, and Reid had pushed harder—if only they hadn't made so many compromises—the bill would be better. But, as sympathetic as I am to that argument on substance, I'm skeptical that, with a different set of decisions, the Democrats could have produced a substantially better law.

Some of this is because of things I learned, or at least came to appreciate, only recently. Take the role of Max Baucus. Of the key players in this debate, Baucus is probably the one most singularly responsible for pushing legislation to the right. But insiders, even those critical of him, will tell you that his early commitment to comprehensive reform—and his subsequent refusal to back off, even after setbacks—made enactment possible. It's frustrating that conservatives hold so much sway over legislation, particularly

time, with the information we had, almost every controversial decision was a series of hard calls—fifty-five percent to forty-five percent at best.”

What's most important to remember about the Democratic leaders is that they took on health care reform when the conventional wisdom said it was too politically risky—and then stuck with it when the conventional wisdom said it was time to give up. Particularly at the end, after Scott Brown, Reid could have said the Senate Democrats were through voting on health care, because that's what much of his caucus was saying. Pelosi could have said the votes in the House just weren't there, because, by all accounts, they weren't. Obama could have said the country and most of the party just wanted to move on, because that's what the country and most of the party was saying.

But Obama, Reid, and Pelosi didn't say any of those things. They pushed ahead. And, whether it was because of idealism, ego, a political hunch, or some combination, they got the job done. They inherited a crusade that liberals launched in the early twentieth century and carried it to completion—transforming life for tens of millions of Americans, reorganizing the most dysfunctional part of the U.S. economy, and proving that the United States can at least make a serious effort to solve its biggest problems. They were lucky, yes. They were also good. ♦

You deserve a factual look at . . .

The Forgotten Refugees

Why does nobody care about the Jewish refugees from Arab lands?

The world is greatly concerned about the Arabs who fled the nascent state of Israel in 1948. But no mention is ever made of the Jewish refugees from Arab lands. Their history is as compelling and arguably more so than that of the Arab refugees from Israel.

What are the facts?

Jews in Arab countries. Jews have lived since Biblical times in what are now Arab countries. After the Roman conquest, Jews were dispersed, mostly to what are now the Arab countries of North Africa and the Middle East. Many Jews migrated to the Iberian peninsula – Spain and Portugal. They were expelled from those countries at the end of the 15th century. They mostly migrated to the Arab countries, where, by now, they have been living for almost 500 years, many Jews for over 2,000 years.

There is a myth that Jews had an easy life in Muslim/Arab countries. The opposite is the case. Jews under Islam were treated as second-class citizens and worse. The relationship was governed by a system of discrimination, intended to reduce the Jews in those Arab countries to conditions of humiliation, segregation and violence. They were excluded from society, from government, and from most professions. They were barely tolerated and often, under the slightest pretext or no pretext at all, were victimized by vicious violence.

When Israel declared its statehood in 1948, pogroms broke out across the entire Arab/Muslim world. Thousands died in this violence. Their homes and businesses were destroyed, their women violated. The vast majority of those Jews fled from where they had lived for centuries. They had to leave everything behind. Most of those who were able to escape found their way to the just-created state of Israel.

Over 850,000 Jews were driven from Arab countries, most of them in 1948, at the birth of Israel. Most of the remainder were chased out during or immediately following the Six-Day War in 1967, when, in fury about the disastrous defeat, the "Arab street" erupted and subjected its Jewish population to bloody pogroms. Israel received every one of those Jewish refugees from Arab countries with brotherly open arms; it housed, fed, and quickly integrated them into Israeli society. They and their descendants now make up more than one-half of the country's population.

Jewish refugees from the Arab countries are the forgotten refugees. The world, and especially of course the Arabs, claim compensation from Israel for the Arab refugees and insist on their return to what has been Israel for over 60 years. The Jewish refugees from Arab countries, all Israelis now, have no desire to return to their ancient homelands, where they had been treated so shabbily and so brutally. But if there is to be any compensation, those forgotten Jewish refugees are certainly entitled to such compensation as much as the Arab refugees. Anything else would be an outrage and a great injustice.

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FLAME

Facts and Logic About the Middle East
P.O. Box 590359 ■ San Francisco, CA 94159
Gerardo Joffe, President

A different history. It is instructive to compare the history of those Jewish refugees with that of the Arabs who fled from Israel during its War of Independence. There were about 650,000 of them. Most left following the strident invocations of their leaders, who urged them to leave, so as to make room for the invading Arab armies. After victory was to be achieved, they could return to reclaim their property and that of the Jews, all of whom would have been killed or would have fled.

In contrast to the Jewish refugees, who were quickly integrated into Israel, the Arab countries resolutely refused to accept the Arab refugees into their societies. They confined them into so-called refugee camps. Those camps are essentially extended slum cities, where their descendants – now the fourth generation – have been living ever since. The reason for the Arabs' refusal to accept them was and still is the desire to keep them as a festering sore and to make solution of the Arab/Israel conflict impossible. These "refugees," whose number has by now miraculously increased from their original 650,000 to 5

million, are seething with hatred toward Israel and provide the cadres of terrorists and suicide bombers.

The Palestinian refugees occupy a unique place in the concern of the world. Since 1947, there have been over 100 UN resolutions concerning the Palestinian refugees. But there has not been one single resolution addressing the horrible injustices done to the nearly one million Jewish refugees from the Arab states.

There have been many millions of refugees in the wake of the Second World War. With only one exception, none of those refugee groups occupy the interest of the world and of the United Nations in a major way. That one exception are the Palestinian refugees. In fact, a special branch of the United Nations (UNRWA) exists only for the maintenance of those "refugees." In the over sixty years of the existence of this agency it has cost many billions of dollars, most of it – you guessed it – contributed by the United States.

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Books & the Arts

STANLEY KAUFFMANN ON FILMS CHANGES

NO MOVEMENT in any nation's film history has had a greater effect, at home and abroad, than the French New Wave. Beginning in the late 1950s and cresting through the 1960s, it not only brought forth new and invaluable talents: it altered in some degree the expectations of audiences. Much has naturally been written about the New Wave. Now here is a French documentary, brisk and fertile, called *Two in the Wave*.

Of all the directors in the wave, and the film deals with some of them, the principals here are François Truffaut and Jean-Luc Godard. The documentary's director was Emmanuel Laurent; the screenwriter was Antoine de Baecque, who has worked on biographies of the two and who supplies the resonant voice-over. The chronology of the film is not strict: de Baecque tells us the story as if we were sitting with him while he remembered things—sometimes a matter he had omitted earlier—and Laurent provides the visual counterpoint, bits of old and new interviews, pertinent clips from films being discussed, visits to studios, and so forth. One problematic novelty: Laurent includes an unidentified present-day young woman who wanders through once in a while, glancing at journals and visiting sites. Laurent says she is there because he wanted to create a link between youth then and youth now. Instead she intervenes.

Anyway, the film spills over with youth, and with older people of the day—producers, advisers—who were invigorated by the young talents around them. We meet Truffaut and Godard when they were feisty young critics on the vigorous journal *Cahiers du Cinéma*, lovingly fostered by the most eminent of French critics, André Bazin. Truffaut had attracted attention in 1954 when he published an article in *Cahiers* that promoted

the auteur theory. This theory, much mooted since then, holds that the prime criterion in judging a film is the quality of its direction; that a film is not an illustrated screenplay, and the screenplay itself may be tacky in a finely directed picture. Everything else in a film is secondary to its cinematic worth. (The auteur theory, before it waned in importance, was a salutary jolt for film criticism.) In general Truffaut and Godard attacked the *cinéma de papa*, the staid orthodox school that, in their view, was arthritic, not intrinsically filmic, and was particularly exemplified by the French entries in the annual Cannes Film Festival.

Both these young men had made shorts of some distinction, and when Truffaut married in 1957, his father-in-law gave him most of the money to make a feature. This turned out to be *The 400 Blows*. Approved by André Malraux, it became the French entry at Cannes in 1959, where it won the prize for best direction. This, as Laurent shows

us, displeased some of the audience, and de Baecque conveys that the effect of giving this prize to Truffaut was as if an agitator outside a palace had suddenly been made king. His success opened the way for other young directors, especially Godard. Truffaut, in fact, wrote the screenplay that Godard used, with changes, as

the base for his own first feature: *Breathless*, in 1959. That *annus* was wildly *mirabilis*: twenty-four French directors made their first features in 1959. And in 1960 there were forty-three more.

Truffaut and Godard plunged along in their different ways, with spotty financial success but with huge influence. (This documentary makes it seem as if for years they lived on cigarettes.) In 1964 I visited eight European countries, courtesy of the Ford Foundation, to speak with film people, and I always asked directors which other directors

had influenced them. In the majority of cases, only five years after the Cannes prize, Truffaut and Godard were the names most frequently mentioned. Truffaut had shown that the lyric leap, in language and in motion, bursting from the character on screen or the

director himself, could give film fresh beauties. Godard battled the very fixity of film, the fact that it is in the can. He kept trying, sometimes through showing the film itself being made, to show that what we were watching was a construct, produced by the world around it, yet—and therefore—particularly illuminating of it. Many of the film-makers I met on this trip, in Eastern and Western Europe, spoke as if these young Frenchmen had liberated them.

A third person who emerged prominently from the Truffaut-Godard outburst was a fourteen-year-old boy named Jean-Pierre L  aud. Truffaut had cast him in the leading role of *The 400 Blows*, in which he triumphed. (Laurent includes a reticent interview of the boy, untouched as yet by fame, in which he tells how he enjoyed testing for the role.) Godard later used him in several films, but Truffaut candidly says in interviews that through the years he used L  aud as an autobiographical vicar for himself in films like *Stolen Kisses*. For L  aud, Truffaut created the character Antoine Doinel in their first picture, and Antoine grew up along with L  aud.

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**TWO IN
THE WAVE**
LORBER FILMS

**LOOKING
FOR ERIC**
IFC FILMS



Truffaut moved on to widening reception; Godard became more of a particularized choice, aesthetically and politically. What was insufficiently noted at the time was that, originally at least, both these men who were ultra-European idols to many were heavily influenced by American film. Flippantly yet seriously, Godard dedicated his first film to Monogram Pictures, a Hollywood manufacturer of pop, and Humphrey Bogart is an icon to the protagonist, helping to transform a wanton murderer into a winning adventurer. Truffaut sometimes said that he would have liked to have been a Hollywood studio director in the Golden Age, to be handed a script every couple of months, to be responsible only for directing. One of the few times that he acted was in an American film, *Close Encounters of the Third Kind*.

The two men worked along, separately but fraternally. (Godard was halted and almost killed by a motorcycle accident in 1971, which is not mentioned by de Baecque.) In 1968, the head of the Cinémathèque Française, Henri Langlois, who had done prestigious service to film, was suddenly dismissed, and Truffaut and Godard organized huge protests that resulted in Langlois's reinstatement. But not long afterward the two directors quarreled and split. The reason given by Godard was political. (The year, 1968, was a steaming political cauldron.) He accused Truffaut of social inaction in his films, aloofness from the real world, a classicism interested only in beauty and indifferent to reality. They were never reconciled. Truffaut died in 1984, cruelly early. Godard, now living in Switzerland, has continued to work, and though his films have often had leftist color, they were also often constructed as aesthetic privacies for the cultivated few.

I had the chance to meet them both at different times. In 1963, Godard came to New York for the first Film Festival there and appeared on a TV program that I then conducted, along with some of the other Festival directors. I had been warned that he was difficult. In proof he was a pussycat, although he didn't talk much. Before he left, he insisted on giving me his phone number in Paris. Though I never actually used it, I felt complimented. I had dinner once with Truffaut in Brooklyn at the home of Ray Bradbury's literary agent. Truffaut was then much interested in *Fahrenheit 451*, of which I had been the editor in my book-publishing days, and as I had become the film critic for this magazine, my presence seemed apt to the agent. I can't remember much of the talk about Bradbury, but I'll never forget

the tender look on Truffaut's face when I mentioned the name André Bazin.

So this new documentary helps to transmute the New Wave from a contemporary explosion into a historical event. Inevitably, not all of the debutants around 1960 lasted or mattered, but the best work of Rohmer and Chabrol and Varda and de Broca is here to stay, along with that of Godard and Truffaut. Most signally, as this documentary makes pleasingly clear, the New Wave enlarged possibilities for an instrument of both immediacy and reach.

KEN LOACH, who began to make films in 1967, has wrought an honorable career as a champion of the English working class. He is not the only director in the field, but he is certainly an admirable one. The viewer of a Loach film can be pretty sure that at some point he or she will be in a dowdy pub in the midlands, knocking back a pint of bitter and joining in some local songs. Regional dialects are sometimes a bit difficult in Loach, as Manchester is in his new work, but it is worth the strain. Loach never treats his workers as proles but as contradictions of T. S. Eliot's dictum that deep concerns are the privilege of princes.

Looking for Eric is a good instance. Eric Bishop is a Manchester postal clerk in his fifties, and the film is about his search for himself. He is in such a tangled family mess that it must be based on fact—no one could invent it. He is twice divorced and has two teenage stepsons living with him, one white and one black, both the children of the same earlier wife by unknown fathers. Eric also has a grown daughter by his other former wife, and

the daughter has a baby. He himself, in the midst of familial whirl and health worries, is trying—as he might say—to sort himself out.

One day when he is in a pub with his mates, one of them asks which famous person each of them would choose, if he could, as his personal guru. Some of the responses are Mandela, Gandhi, and Frank Sinatra. Eric's is Eric Catona, a former popular star of football (which we call soccer). In fact, in Eric's home he has a life-size photo of Catona on the wall and a lot of action photos. One day, after taking a few puffs of a joint in his room, he turns around and there is Catona. Himself.

It surprises us, too, because Loach is very much a verist. Still, there is no smoke-and-mirrors magic about it: Catona is just suddenly there, graying, friendly, stalwart. He frequently reappears thereafter, with hints about Eric's problems. The situation is all the more engaging because neither of the Erics ever treats their meetings as mystical. This is, I think, a first for Loach. He has long been keen on football, we know from past pictures, but this is a new venture into the fantastic, made all the funnier because Loach treats it as matter-of-fact.

The trouble with Paul Laverty's screenplay is that he, presumably with Loach and others, felt that all this should lead to something dramatic. One of Eric's stepsons gets involved with grim gangsters, and the film ends with a large community action of courage straight out of a 1930s Hollywood problem picture. But until then, Steve Evets's travails as the postal Eric and the warm stature of Catona make us feel like their cronies. ♦

JED PERL ON ART SOCIAL ACTION

THE SOCIAL HISTORY of art in our time will not be easy to write. A daunting range of factors must be taken into account. There is now a large, heterogeneous public aware that art is big business, and it is eager to follow developments in the auction houses, the commercial galleries, and art fairs such as the Armory Show in New York and Art Basel Miami Beach. The ever-increasing prominence of moving images, performance art, and Disneyland-scale installations in museums and galleries can make the art world seem an extension of the mul-

tiplex. And the insider scoop about artists, collectors, and dealers, while of interest to far fewer people than the backstory about Hollywood, Wall Street, or Washington, is regularly covered in *Vanity Fair*, *The New Yorker*, and *The New York Times*. Consider only the last few months, when the major offerings at the Museum of Modern Art have included the work of Marina Abramović, a performance artist whose retrospective includes reconstructions of her own earlier pieces, with dancers hired to fill certain roles; and of Tim Burton, the Hollywood director, exhibiting drawings, paintings, and models

related to his movies; and of William Kentridge, whose work includes films and stage designs. And even a social history of art that takes into account all these factors could still fail to answer the most important question, which is how such developments are affecting the way artists approach, discuss, and understand artistic experience, which in turn affects what they choose to create.

The social dimension of art, always significant, has nearly swamped the reflective or contemplative aspects of art. In New York this season, with the Abramović retrospective, "The Artist Is Present," at MoMA and an exhibition by the performance artist Tino Sehgal at the Guggenheim, it could be said that social dynamics are the alpha and the omega, so far as the public and the press are concerned. The history of art threatens to become little more than a history of social interactions. At MoMA, Abramović, who was born in Belgrade in 1946 and now lives in New York, has put on what amounts to a stunt, sitting on a chair in front of a table in the atrium all day, every day the museum is open, as visitors sit down in a chair across from her for as long as they like. This is a non-digital form of "interactivity," but the crude principle is the same.

My impression of the people sitting opposite Abramović is that they were not contemplating her so much as they were stepping out as the stars of their own art show: Jane Doe Meets Marina at MoMA. The important point is that audience reaction has itself become the central subject, so much so that *The New York Times* devoted a front-page story to what some at MoMA were characterizing as the inappropriate behavior of a few museumgoers. When a visitor touched one of the naked performers in Abramović's *Imponderabilia* and told the male dancer, "You feel good, man," the visitor was banished from the museum. The reporter found no irony in the puritanism of the avant-garde, which invites museumgoers to move through a narrow passage, with naked performers on both sides, and dictates that it is okay to brush against them but not to reach out and touch them.

Nobody has gone further in getting the general public into the act than Tino Sehgal, who was born in London and is now in his mid-thirties. I have listened to people who went through "This Progress," one of two Sehgal events at the

Guggenheim, describe the experience of ascending the Frank Lloyd Wright ramp as paid performers of various ages came up to them and addressed them with a series of pre-arranged questions and responses. It is clear that these museumgoers felt that they were themselves being showcased. I have to confess that I did not see Sehgal's exhibition. I dreaded the prospect of walking into an empty museum where a schoolchild, trained by Sehgal for the purpose, was going to ask me, "What is progress?" I did not want to be dragged into what amounted to a social experiment. I go to museums to have private responses to something that somebody else has made, not to become part of their shtick. In defense of what some will regard as a dereliction of duty, I can say only that I was unwilling to find myself in a situation where I might end up

venting my annoyance at a child. These children were in my view already victims of a sort, pawns in what amounted to one of the biggest snow jobs the museum world has ever seen. On the sidewalk outside the Guggenheim, somebody ought to have been handing out copies of "The Emperor's New Clothes."

There are now art events in which artistic experience is beside the point. And indeed it is arts reporters and feature writers, rather than art critics, who have discovered an apparently limitless supply of ideas in the life and work of Abramović and Sehgal, although their productions certainly appeal to some intellectuals. (Arthur Danto wrote one of the essays in Abramović's MoMA catalogue.) Abramović's work is finally about her theatrical chops, her star power. *Imponderabilia*—the performances with two naked people standing in a doorway, realized at MoMA sometimes by two men, sometimes by two women, sometimes by a man and a woman—was originally done in 1977 by Abramović and Ulay, the stage name of Frank Uwe Laysiepen, who was her creative and romantic partner for about a decade. Many of the performances they did during those years can be seen on video (transferred from film) in the MoMA show.

Whatever ideas about human relations these films may mean to explore, I doubt anybody would care about Abramović and Ulay if they were not so attractive. In her younger years, Abramović had the dark, bold, rather exotic looks of one of Picasso's mistresses. Ulay, with a lean,

defined physique and chiseled features, was the Eastern European intellectual lover boy. They suggest a pair of lovers in a Kundera tale: Daniel Day-Lewis and Lena Olin in the movie of *The Unbearable Lightness of Being*. Abramović and Ulay are essentially people of the theater. This is of course no bar to pursuing one's career in the museum, nearly a century after Duchamp declared that anything that happens in an art space is an art work. But once you have granted that Abramović and Ulay have every right to appear in the museum, you are left with the problem that their work does not amount to much as theater, either. The thin absurdism of the actions—spinning around together, brushing against each other, and so forth—leaves me longing for Buster Keaton.

THE EXPECTATION THAT a work of art is a stable fact to which the audience freely responds has been replaced by the assumption that a work of art is a speculative act meant to trip up or divert or otherwise grab the attention of the public. While some conservatives will tell you this is what happens when you bring elite culture within the grasp of a restless and ungrounded democratic audience, what is now going on in the galleries and the museums reflects not the will of the people so much as the whims of the elite: a few curators, dealers, and collectors. "Skin Fruit," the exhibition that Jeff Koons curated at the New Museum this spring of work from the holdings of the Greek mega-collector Dakis Joannou, proves nothing except that a moron with money can see a New Age Michelangelo in an artist's re-imagining of Madame Tussaud's waxworks. Aside from the work of Robert Gober, whose Duchampian rigor looks like purebred classicism in this context, the show is a monstrosity, featuring a prehistoric woman with hair on her breasts by the team of Tim Noble and Sue Webster, an eight-foot-high businesswoman by Charles Ray, and a couple of live performances, one by Pawel Althamer involving an actor impersonating Christ on the Cross, the other by Tino Sehgal featuring a performer singing (as well as I could tell), "You know. You know. This is propaganda." (We know. We know.) There are also some paintings at "Skin Fruit," and they too are not a matter of form but of format, such as Tauba Auerbach's *Crumple VI*, which appears to be a photorealist image of crumpled paper executed on a large canvas. Such a work is meant to stop you in your tracks and make you do a double


**MARINA
ABRAMOVIĆ:
THE ARTIST
IS PRESENT**
MUSEUM OF
MODERN ART

SKIN FRUIT
NEW MUSEUM

**WILLIAM
KENTRIDGE:
FIVE THEMES**
MUSEUM OF
MODERN ART

take, nothing more. This is *trompe l'oeil* without anything for the eye.

"Skin Fruit" raised a considerable kerfuffle in the press, with the New Museum accused of bolstering the value of works owned by Joannou, who happens to be a New Museum trustee (in addition to running his own foundation in Athens). As far as I am concerned, Mr. Joannou can go to hell and take most of his collection with him. But too much can be made of the argument that in mounting "Skin Fruit" the New Museum somehow endangered the social or even legal contract that binds the museum and the public. I would not have been any happier with "Skin Fruit" if the decision to present Joannou's collection at the New Museum had been the result of a referendum in all the five boroughs. (Maybe Staten Island is hungry for Jeff Koons.) The real problem is that sociology has obliterated sensibility. Discussions about the social place of art, whether we are talking about a Greek tycoon's collection showcased on the Bowery or an Central European performance-art star ensconced in the atrium of the Museum of Modern Art, have trumped any discussion of quality or qualities. Perhaps it would be more accurate to say that social quality is the only quality left.

What nobody is willing to discuss is the extent to which social dynamics are transforming the way art is understood by the people who create it. There are fewer and fewer art schools and art departments where the fundamentals of artisanal endeavor are taught as a stable discipline. I am told that most college-level teaching jobs for artists now expect some expertise in digital or other electronic media. Painting or drawing is no longer enough, even for a painter. A sophisticated artist can no longer get away without having an opinion about Abramović's and Sehgal's performances, and those opinions must somehow be held in one's mind alongside one's opinions about the paintings of Ellsworth Kelly and Joan Snyder. The rapidly shifting social settings in which art is experienced necessitate a kind of mental gymnastics. One must be able to think about paintings and performances more or less simultaneously.

The result is that the freestanding value of art, by Kelly or by Sehgal, ends up as another performance-art value. Ringing in my ears all this spring has been a sentence in a little catalogue essay that Alexi Worth, a painter and critic, wrote for the

show at the Betty Cuninghame Gallery of new paintings by William Bailey, who has for decades been revered by artists and critics as a steadfast defender of classical values. Bailey, Worth wrote, is "committed exclusively to two of the least promising pictorial formats—still-life and the nude." Least promising! How on earth could this artist who has cared so deeply for Balthus and Morandi, for Ingres and Cézanne, permit still life and the nude to be described in this manner in the cata-



Marina Abramović and Ulay,
Imponderabilia, 1977

logue of his own show? Is Bailey apologizing (or allowing Worth to apologize) for the now-dubious status of still life, that most contemplative of all genres, in a meet-and-greet art world?

To make a particular work of art is now less important than adopting an attention-grabbing attitude about the making of art. A self-consciously slapdash style of painting, especially popular in the past few years, has all the fashion-forward appeal of a thirtysomething ar-

riving at a black-tie gala in a pair of deftly distressed jeans. The old masters of this down-with-painting brand of painting are the American Mary Heilmann and the Belgian Raoul De Keyser. Luc Tuymans's bleached-out renderings of photographic images have earned him a traveling retrospective with a catalogue that contains a worshipful essay by the art historian Joseph Leo Koerner. What worries me is the hyper-intellectualized superficiality that may discourage younger

artists from exploring the possibilities that are implicit in a medium. In the abstract paintings and constructions that made up Julia Dault's first New York solo show at Blackston, in March, this artist was reaching for the eloquence of extreme simplicity, with lengths of Formica pressed into graceful curves and a canvas, *Magic Hour*, filled with feather-like brushstrokes. I felt an artist's eye and an artist's intelligence, but also a tendency to strike a pose about painting or sculpture rather than to paint or to sculpt. Is there some fear that if you give yourself over to an artisanal discipline you will be perceived as *merely* making art?

In the past few years another younger artist, Greg Lindquist, has made a name for himself with paintings of deteriorating industrial buildings, many of them in Brooklyn, where he lives. It appears that when it came to putting together his show at the Elizabeth Harris Gallery this spring, paint on canvas was no longer enough. Now Lindquist is combining his paintings of run-down commercial buildings with large box-like concrete forms that are strewn around the gallery, perhaps suggesting fragments of columns or walls removed from those buildings. In principle I have no objection to the melding of two- and three-dimensional works, but in Lindquist's case the effect was to make mere props of his canvases. The urge to take one's stand between several genres sometimes seems more than anything else like an effort to attract the attention of several different audiences simultaneously, thereby maximizing the number of people who are going to take an interest in your work.

In an interactive art world, neither the artist nor the audience can risk staying put for very long. Thus we have art that must be kinetic in one way or another, and art fairs so enormous that nobody has a chance of covering the terrain if they stop for more than an instant to

COURTESY MUSEUM OF MODERN ART

look at any particular thing. On the closing Sunday of the Armory Show's five-day run in March, I surveyed the more than 250 booths representing art galleries and art publications mounted on Piers 92 and 94 on the west side of Manhattan. What astonished me were the crowds, with young couples on dates and families with children moving through the endless aisles, then collapsing in lounging areas for a snack or a drink. Since it was close to impossible to get up close and personal with any particular work of art in what amounted to a perpetual pedestrian traffic jam, it was the crowd itself that became the thing to consider: sixty thousand art lovers in search of a work of art.

The 2010 Whitney Biennial was yet another blur, a business-as-usual mix of videos, installations, drawings, and so forth. This Biennial has inspired not one bit of excitement, among the people or among the press. The New Museum, with its striking setting in a not-yet-entirely-gentrified stretch of the Bowery, is the place where New Yorkers now like to go—and which the critics now deem important enough to hate. No wonder the Whitney has been working so feverishly to set up its own downtown outpost, with on-again, off-again plans to build in Chelsea. The spirit of restlessness that the Whitney has over the years done so much to encourage has rendered the Whitney Biennial old hat. I left the 2010 Biennial with a clear impression only of Jesse Aron Green's video *Ärtzliche Zimmergymnastik*, in which sixteen men stand on sixteen platforms in minimal gym dress, performing a series of calisthenics derived from a nineteenth-century text by the German physician Daniel Gottlob Moritz Schreber. The result is a geometricized dance composition, with suggestions of Oskar Schlemmer's choreography at the Bauhaus. You do not have to read the commentary on Green's video to see that he is fascinated by the interplay of anatomy, geometry, physicality, and sexuality. The disciplining of the body takes on erotic, symbolic, and psychological dimensions. Filmed in a straightforward documentary style, *Ärtzliche Zimmergymnastik* is matter-of-fact magic.

MOVING IMAGES are here to stay in the museums, whether the Whitney, the New Museum, or the Museum of Modern Art. For museumgoers who lack the patience to unlock, by means of careful looking, the element of time inherent in a painting or a sculpture, experiences that are kinetic give high culture an Everyman

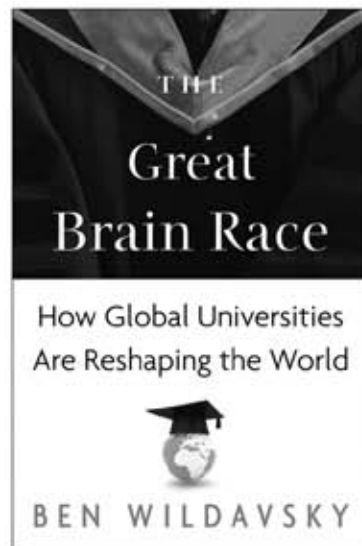
allure—and few artists are more adept at this brand of seduction than William Kentridge. For years Kentridge has been photographing his drawings as he works on them, and then stringing the successive images together to create rough-hewn animated movies. "William Kentridge: Five Themes"—which opened at the San Francisco Museum of Modern Art a year ago and was at MoMA this spring—includes Kentridge's early explorations of two middle-aged everymen, Soho Eckstein and Felix Teitlebaum, and works related to productions of Mozart's *The Magic Flute* and Shostakovich's *The Nose* (recently mounted to great acclaim at the Metropolitan Opera).

Kentridge's gruff, serviceable graphic style has a 1930s Social Realist look, except that the old themes of social alienation are given an existential Beckett-ish glamour. He is an ingenious, seductive artist. Kentridge gives you a lot to study; he plays with your expectations. In his animations, he likes to erase the images that he has just inscribed, as if to suggest that his ponderous protagonists are only phantoms. In the room at MoMA devoted to the *Magic Flute* project, he arranges benches before a model theater, and visitors quite naturally sit down and wait for a performance to begin. But part of the action, a video projected on a blackboard casually set on an easel, turns out to take place to the side, so you have to pivot in your seat to see what is on: a lesson in expecting the unexpected. The gallery devoted to *The Nose*, with videos on four walls, is a collage of old footage of Shostakovich playing the piano, of Kentridge's renditions of Russian Constructivist art, of fragments from Bukharin's interrogation at the plenum of the Central Committee of the Communist Party in 1937, and of many other things, all adding up to an exploration of the Soviet soul or an experiment in radical chic—take your pick.

I was beguiled by the antiquarian charm of Kentridge's toy theaters and the artisanal vigor of his animations. He is an entertainer, no question about it. In the end, however, I was overcome by the suspicion that always afflicts me when I see Kentridge's work, which is that he is pandering. He plays a cat-and-mouse game, with Kentridge as the big fat tabby and those of us in the audience as the little mice, teased by his unfolding stories that never really go anywhere. Here a little Mozart, there a little Soviet history. Now you see him, now you don't. It is a cat-and-mouse game that has earned Kentridge an ardent following among museumgoers around the world. I was a

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—Chester E. Finn, Jr., *Education Gadfly*

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little surprised at how sparsely attended his retrospective was on the afternoon when I visited, but I did not have to wonder for very long. After leaving the Kentridge show I almost immediately found myself in the thick of the Tim Burton show, which was as crowded as Times Square on New Year's Eve.

William Kentridge may be pandering when he offers the museumgoing public his homemade movies—but then what is the Museum of Modern Art doing when it devotes a show to drawings, paintings, and models by Tim Burton, the creator of *Beetlejuice*, *Batman*, *Edward Scissorhands*, *Ed Wood*, *Charlie and the Chocolate Factory*, and *Alice in Wonderland*? Glenn Lowry, the director of MoMA, imagines that he is responding to precisely this question when, in the catalogue for the Burton show, he observes that “the Museum of Modern Art has been presenting the art and artists of cinema in its galleries since May 1939, when it opened ‘George Méliès: A Film Pioneer.’” Oh, come on. In 1939 Méliès was not exactly the household name, or the box-office gold, that Tim Burton is in 2010.

The Tim Burton show has been a huge hit for MoMA. How could even Kentridge compete with this exhibition that is every artsy adolescent's wet dream of his own MoMA apotheosis? Walking through the Burton show was like spending some time in a geeky-creative kid's bedroom, where you find, among the dirty socks and old pizza boxes, his favorite record albums, the monsters he doodled on his unfinished chemistry homework, and the painting of a girl with stitched-up blue skin that earned him an A in his ninth-grade art class. Burton, who is perhaps too famous to need to put on airs, comments in the catalogue that “there wasn't much of a museum culture” where he grew up in Southern California. “I occupied my time going to see monster movies, watching television, drawing, and playing in the local cemetery. Later, when I did start frequenting museums, I was struck by how similar the vibe was to the cemetery. Not in a morbid way, but both have a quiet, introspective, yet electrifying atmosphere.”

Burton is anything but a fool. I can see why he would want to make this hipster flip on the old idea of the museum as a graveyard. He is telling us that the museum is a groovy graveyard: although this is where the old masterworks go to die, they have some life in them yet. The irony is that the Museum of Modern Art would be a lot closer to the model of the museum that Tim Burton is describing if Tim Burton were not the subject of a

show at the Museum of Modern Art. The Burton retrospective is an insult to the “quiet, introspective, yet electrifying atmosphere” that Burton himself says he wants to see in the museum.

Everybody knows that Tim Burton has produced big grosses for the Museum of Modern Art—but the more complex exchange goes in the other direction, and it involves the elevated social status that Burton receives from the museum, where he can now be discussed in the same

terms as Picasso or Pollock. This, too, is an aspect of the social history of art. And this brings us back to where we began. There comes a time when social values threaten artistic values and a line must be drawn, with social experience on one side and visual experience on the other. If the true social history of art in our day is ever going to be written, one that traces the losses as well as the gains, it will require a historian with an appreciation for the limits of social experience. ♦

Michael Walzer

TRYING POLITICAL LEADERS

Why George W. Bush is not like Louis XVI.

I.
TRYING POLITICAL LEADERS: I do not mean trying them out, in advance, to see if we are likely to find their leadership disastrous, though that might be a good idea if we could find a way of doing it. In politics, judgment does not have to be, and often cannot be, after the fact. But it is post facto judgment that I wish to discuss: the morality and wisdom of putting political leaders on trial after we have endured their leadership and, perhaps, their crimes. In the aftermath of the Bush administration, this question has been furiously debated (for example, in Elaine Scarry's recent book *Rule of Law, Misrule of Men*). But political trials have a long history, and the judgments we make of their procedures and verdicts have always been contested. So here is a comparative politics of political trials, aimed at illuminating the controversies.

I will consider four kinds of trials. All are from the modern period; I am not able to discuss the Greek and Roman precedents. The four are, first, revolutionary trials (such as those that took place in 1649 and 1793 in London and Paris); second, show trials that are part of a political purge (such as the Moscow Trials of the 1930s); third, post-war trials (such as those held in Nuremberg between 1945 and 1949); and, fourth, what I will call post-election trials (like those proposed for Bush administration officials). My perspective throughout is that of a political theorist, not a lawyer. The legality of political trials is often dubious, but that is not my central concern.

A version of this essay was delivered as a Dewey Lecture at the University of Chicago Law School.

It is possible for trials to be legally dubious but morally and politically right (and perhaps even necessary). It is also possible for them to be perfectly legal but radically imprudent.

LET US BEGIN with the trials of Charles I and Louis XVI by the revolutionaries who overthrew them. These are critical moments in early modern political history—our political history, for we, citizens of a republic, are the heirs of these trials. Kings had been killed before; indeed, untimely death was a regular feature of kingship all through its history. But they had been killed by single assassins, like Henry IV of France, stabbed to death by François Ravaillac, or murdered in corners, out of sight, like Richard II in Pontefract Castle. When Oliver Cromwell said of Charles that “we will cut off his head with the crown on it,” he was aiming not simply at the death of a king but at the death of monarchy itself. And that required, he thought, a public accounting—an indictment and a trial that challenged the legal inviolability of kings and treated this particular king as a public official, answerable to the public, as capable of committing a crime as any other subject of the realm.

Not all the revolutionaries wanted to put the king on trial (and not all those who favored the trial wanted to kill him—but I am not going to get into the question of the death penalty here). The debate in France over what to do with Louis raised issues that re-appeared in the run-up to the Nuremberg trials, and they are worth considering in some detail. The Jacobins opposed a trial, arguing that Louis had committed no crimes to which the law reached. His only crime “was to have been king”—and this was obviously not a

crime under the law of the *ancien régime*. “No one can reign innocently,” said Saint-Just, but in fact he was not interested in the guilt or the innocence of Louis. What he and Robespierre believed was that ruling as a king, reigning, was an act of war against the people the king ruled.

This was an unjust war, a war of aggression, but Louis was not first of all a criminal: he was an “enemy of the people” (I believe that this phrase has its origin in the French debates), and since he was dangerous even in captivity, military necessity required that he be killed. He could not be treated as a prisoner of war; the legal phrase “benevolent quarantine for the duration” comes later, but it describes very well what the Jacobins thought impossible in the case of kings (and what the Bolsheviks still thought impossible in 1917, when they acted on the Jacobin doctrine—though with their own special ruthlessness, killing the czar and all his family: no Jacobin suggested anything like that in 1793). Like Cromwell, Robespierre and Saint-Just wanted to kill the king with his crown on, but they were not interested in a public indictment. They thought that a trial was something owed only to citizens—and soon enough they would be putting a lot of citizens on trial. But they saw no need to make a case, to persuade men and women who had been ruled by kings for centuries that this king had betrayed them. It was self-evident that kings and patriots were in a state of war.

The underlying assumption of the Jacobin argument was that Louis was not a Frenchman—that is, not a member of the nation or a citizen of the state, and not a party to the social contract. Kings, and aristocrats too, belonged to an international class of parasites and predators, who took no responsibility for the well-being of the people they ruled because they were not “of” the people. And so they had no claim on the protection of the revolutionary state that the people had created. Once, a king of France had arrogantly proclaimed that he was the state (“*L’état, c’est moi*”); now the Jacobins proclaimed that the king was stateless. I am not sure that this description, despite its fierceness, was entirely inaccurate. Louis himself might have agreed that he never signed on to the social contract. Still, it was a dangerous description since it could easily be extended to other “enemies” of the people.

I much prefer the Girondins, who were the chief advocates of a trial for Louis, and who carried the day, though they did not get the trial that they wanted. They argued that Louis was indeed (and obvi-

ously) a Frenchman: he was Louis Capet, a public servant, who had committed the crime of treason by conspiring with and actively assisting enemy armies attacking the republic. And, of course, the law reached to this crime. Even under the *ancien régime*, treason was a criminal act, though it was thought then, mistakenly, that the king could not be a traitor (since treason was defined as a crime against himself). But the king had always been, in fact, an officer of the people, and treason was always a betrayal of the people and not merely of its chief officer. The real innovation of the revolutionaries was to deny the king’s inviolability: if the law’s reach extended to the crime, then, they insisted, it extended to the criminal. All Frenchmen were equal before the law. This was an *ex post facto* equality, but the Gironde was willing to live with that, since equality, its members thought, was natural and eternal—even if it was new to French law.

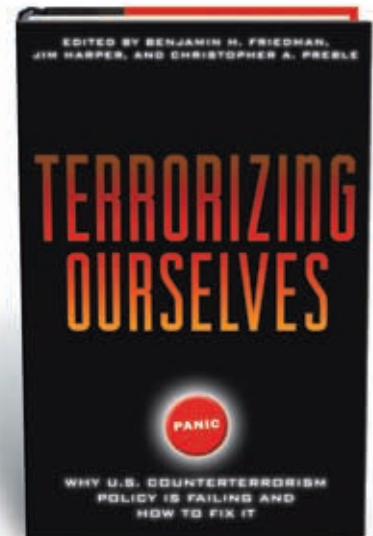
It followed from the Girondin argument that Louis should be accorded all the rights of a French citizen accused of a crime—that he should be represented by an attorney, and that he and his attorney should know the charges against him, see the documentary evidence collected by the prosecution, and be allowed to question hostile witnesses and to call friendly witnesses to the stand. “What justice truly demands,” argued Condorcet, the leading intellectual of the Gironde, “is that . . . the general principles of jurisprudence in favor of the accused should be preserved or even extended.” This sort of thing, Robespierre responded, was a sign of “delicacy”—the term was disdainful; delicacy in the case of kings demonstrated nothing more than a lack of revolutionary energy. Robespierre and his friends called Louis “the last king”—their politics was resolutely forward-looking. Condorcet and his friends called Louis “the former king”—their politics aimed at a just reckoning with the past.

But the trial that the Girondins wanted was also intended to have consequences for the future. In a sense, it was a show trial and, indeed, a splendid spectacle: the king judged by his subjects, his peers! Louis Capet, *ci-devant roi*, standing before the court, exposed as a mere man, all the mythic masks of kingship torn off, but charged with crimes he had committed when he wore the crown—this could not help but be, Condorcet believed, a great moment in the education of the human race. Yet if it was to make this kind of “showing,” it had to be a real trial. Its educational value depended on its procedural integrity.

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Many years ago, in a book defending the trial and the execution of Louis XVI, I adopted what was pretty much the Girondin position. It still seems to me to be the right view. "Revolutionary justice is defensible whenever it points the way to everyday justice. This is the maxim that marks off morally legitimate trials from proscription and terror. The legitimacy of the king's trial lies first in its resemblance to an ordinary judicial proceeding. Condorcet was entirely right to argue that the nearer the resemblance, the better the trial: the more just for the king and, not inconsistently, the more effective for the revolutionaries. But justice in revolution cannot be measured in a purely formal way, for what is usually at stake is not the validity of this or that procedure—there was no disagreement in the Convention [the revolutionary assembly] as to what constituted a fair trial—but the status of the men and women involved. In the case of the king, what was at issue was whether he was justiciable at all. Here the whole purpose of the revolution was to change the law, not merely to apply it, and it is obvious that the proposed changes have to be defended in political and moral, not in legal, terms. Hence the second and more important defense of Louis' trial is simply the claim that to turn kings into citizens is to advance the cause of justice."

II.

THE TRIALS THAT accompany political purges are also "show trials," but their educational value depends on their lack of procedural integrity. The aim is to inspire fear among opponents and potential opponents of the regime, and so it is necessary that everyone watching the trial understand that what Condorcet called "the general principles of jurisprudence in favor of the accused" have no place here. The law offers no protection: if you are accused, you are dead.

But then why go to the trouble of organizing a trial? The "purge" metaphor does not suggest the need for any kind of judicial procedure: corrupt elements are simply removed from the body politic. Indeed, many enemies of the regime, in the Soviet Union in the 1930s, for example, were simply arrested and shot—and something like that has probably happened, though on a much smaller scale, in Iran today. "Disappearances" of this lethal sort certainly have an educational effect. But the organizers of a purge want something more than this, which they apparently think only a trial can provide. Considerable care went into the preparation of the Moscow Trials, and today we

can see something of the same care in Tehran, where it is similarly difficult to understand. What point can there be in organizing a trial if the procedures that constitute a "trial" are ignored? Fear can obviously be produced in other ways.

It is the confession, I think, that is crucial in the purge trials. Procedural justice is rendered unnecessary by the abject confession of the accused. But these two have different purposes: procedural justice, in the case of Charles and Louis, was meant to convince the political public that kings were as liable to prosecution as any other citizens; they were public officials who had in fact committed crimes. Confession is meant to degrade and disgrace former revolutionary leaders suspected of "oppositional tendencies." The charges and then the confessions are unbelievable, contradictory, absurd, and precisely for this reason the recitation by the defendant of his "crimes" is an act of public self-abasement and political self-destruction. He is not guilty so much as helpless, beaten, cowardly, irrelevant. The sabotage, espionage, and treason to which he confesses are inventions of the regime, which require a radical rewriting of history, and the trial's message is that the regime can transform the past in any way it likes and is therefore in firm control of the future. It can do anything, whereas its opponents can do nothing but acquiesce. The trial provides an occasion for their ritual acquiescence to their own political oblivion.

But this cannot be the whole story. Stalin insisted that confessions be extorted, by torture if necessary, from tens of thousands of his victims who were never brought to trial—who were simply shot or transported to the camps without any public appearance. Their confessions were sent to the archives, marked "to be kept forever." Robert Tucker offers a psychological explanation of Stalin's insistence: insecure in his paranoia, Stalin needed this confirmation that the people he was purging were indeed enemies of the revolution—which is especially odd, since he certainly knew that the hostile acts described in the confessions had never taken place.

Everyone else should have known that, too. And yet the charges and the confessions that I just called "unbelievable" were believed by many people—not only faithful communists prepared to believe anything, and not only clever philosophers, such as Merleau-Ponty, who argued "dialectically" that even if the charges were factually false, they were politically true. Independent observers, journalists from many countries, liberal

and conservative intellectuals, diplomats (such as Joseph E. Davies, the American ambassador) watched or read about the trials and concluded that the defendants must be guilty of something—as if political defeat was itself a sign of guilt. Hence it was really important to insist that the purge trials were not "trials" at all, for nothing was being tried: every outcome was known in advance, and all the evidence was made up. The failure of so many politicians and activists, especially (but not only) on the left, to join in this insistence is a lasting shame.

Of course, purge trials do bear some resemblance to real trials, else they would not "work" at all. Confession is a common way of giving up procedural rights in exchange for other benefits, sometimes life itself. But the resemblances are superficial, and it is still very hard to accept the fact that so many intelligent people were fooled by the Moscow Trials. The absurdity of the charges, the groveling confessions, the broken men in the dock—this was terrorism in the guise of justice.

III.

JUSTICE AFTER a war is commonly called "victor's justice." It resembles the justice done (or attempted) by triumphant revolutionaries, and after World War II it prompted similar debates—though with one important difference. Many of those who opposed the establishment of the Nuremberg tribunals did so out of a strong commitment to procedural justice. Their arguments were different from those of the Jacobins, though their conclusion was similar: the leading Nazis should be shot as soon as they were captured. A fair trial, in accordance with British and American principles, was more than they deserved, but even more importantly, it was unlikely that any trial would be, or would be seen to be, fair.

The British War Cabinet worried that since "the result would be a foregone conclusion, these proceedings would tend to bring judicial procedure into contempt." As Gary Bass writes in *Stay the Hand of Vengeance*, his fine study of war crimes tribunals (and my chief source here), the British "showed an unwillingness to compromise the integrity of their traditional judicial procedures—and a willingness to be blunt about [their unwillingness]." This bluntness is evident in Churchill's proposal that the Allies produce a list of the fifty or one hundred leading Nazis and then

when any of these persons fall into the hands of any of the ... armed forces of the United Nations, the nearest officer

of the rank ... of Major-General will forthwith convene a Court of Inquiry, not for the purpose of determining the guilt or innocence of the accused but merely to establish the fact of identification. Once identified, the said officer will have the outlaw ... shot to death within six hours and without any reference to higher authority.

I should add that Churchill responded with high indignation to Stalin's proposal at the Tehran Conference in 1943 that at least fifty thousand Germans should be proscribed and shot. "The British Parliament and public," he told Stalin, "will never tolerate mass executions." Churchill aimed to kill no more than one hundred; there would then be trials for all the "subordinate war criminals," preferably in the country in which their crimes had been committed. Despite the designation of these people as "criminals," the outcome of their trials was presumably not a foregone conclusion.

Churchill's "outlaw" plays something of the same part as Robespierre's "enemy of the people." Both terms describe people who are somehow beyond the law. With regard to the Nazis, Anthony Eden wrote, "the guilt of such individuals is so black that they fall outside ... the scope of any judicial process." Their fate, Sir John Simon, the lord chancellor, told the Cabinet, is "a political, not a judicial, question." That was also the Jacobins' view of the king's fate, though they expressed it in quasi-military terms and without, obviously, the "delicacy" of the Cabinet's legalism.

In the United States, Henry Morgenthau represented the Jacobin position, and Henry Stimson, with support from Felix Frankfurter, was the Girondin. He was working out the position that Robert Jackson defended at the London Conference, and then expressed with great eloquence in his opening statement for the prosecution in Nuremberg: "That four great nations, flush with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason."

The reason for the tribute was twofold. First, the Americans had a strong commitment—often called "legalistic," though it seems to me deeper than that word suggests—to the value and the integrity of judicial procedures and, in contrast to British jurists, were optimistic about the possibility of sustaining procedural integrity in a post-war court. They believed, as Otto Kirchheimer wrote in

1961 in *Political Justice*, that victor's justice "did not exclude judicial freedom of appreciation of the role of individual German leaders"—and, indeed, that freedom led to acquittals as well as verdicts of guilty. The Nuremberg results were not, then, a "foregone conclusion." Second, they believed, much like Condorcet, in justice as moral education. Only a trial, Stimson argued, only the detailed testimonies and the massive documentation that a trial would require, would "demonstrate the abhorrence which the world has for [the Nazi system of terror] and bring home to the German people our determination to extirpate it and all its fruits forever."

I am not going to argue that Nuremberg was a successful demonstration—just as I did not argue that the trial of Louis was an effective or a great moment in the education of humankind. Certainly, the impact of Nuremberg was resisted in Germany at the time (and in some quarters ever since), though I believe that the trials of Nazi war criminals have had significant, if hard to measure, effects—legally, politically, morally. Curiously, perhaps, they have had the greatest effect where they were legally most dubious. This is the argument that Judith Shklar made in her discussion of the Nuremberg trials in 1964 in her book *Legalism*. "Crimes against humanity" was the most innovative of the charges brought at Nuremberg; Kirchheimer called the legal formula "problematic," and if you read the lawyers' arguments in 1945 it was certainly that. But Shklar predicted, correctly, that this was the charge (with "genocide" later incorporated into it) that would resonate over the years. In the sixty-five years since 1945, by contrast, nobody has been brought to trial for the crime of aggression, and no such trials have been seriously contemplated, though the criminality of aggression was established in international law well before Nuremberg, by the Kellogg-Briand Pact in 1928.

It is astonishing to remember that there were lawyers and jurists in Britain, the United States, and France who thought that the Nazi leaders could be tried only for "crimes against humanity" committed in the occupied countries. They argued, as Bass reports, that "the killing and persecution of German Jews" was "protected by German sovereignty"—not permitted or justified by sovereignty, but "protected" in the sense that they did not fall within the jurisdiction of an international court. This claim was rejected by the prosecution, whose argument eventually won the day. International jurisdiction was explic-

itly affirmed in the Genocide Convention in 1948 and in the Rome Treaty in 1998: sovereignty does not extend to mass murder. Today it is widely (though not universally) accepted that a government engaged in the massacre of its own citizens can be overthrown by foreign military forces—and that its officials can then be brought to trial in either a national or an international court. This liability was first defended in the Nuremberg trials, which pointed the way, like Louis's trial, to "everyday justice," though the examples of Rwanda and Darfur suggest that we are not there yet.

IV.

IMAGINE THE FOLLOWING case. A group of political leaders, who have been in power for almost a decade, lose an election. Many supporters of the winning party believe that the policies of the defeated leaders were criminal, because they involved the violation of specific laws, domestic and international. These victors want to put the defeated leaders on trial, and this, they claim, is a perfectly reasonable and entirely legal thing to do. It is not revolutionary justice, since the turnabouts in democratic elections are not revolutionary: the regime is not being changed, only the government. The constitution, the whole legal system, is intact; no new understandings of agency and responsibility are required to justify the trials that are now proposed.

Nor would this be "victor's justice" as in the Nuremberg trials, because competitive elections are not like wars, even when we use the language of war to talk about them (we run campaigns; we try to outflank our opponents on the right or the left; we design strategies and tactics; we maneuver for advantage; and so on). But we are not, in fact, fighting. Moreover, post-election trials would not be a case of "victor's justice," because the trials would be conducted by independent judges who are not newly installed and who are not active members of the winning

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(or the losing) party. The decision to bring charges, or to launch an investigation that might result in charges being brought, would have to be taken in the United States by the attorney general, who is a political appointee (and whose appointment is politically very sensitive). Still, the trials themselves could be and would be, so their advocates claim, insulated from partisan politics. Nor, finally, would the proposed trials be anything like a purge. The charges would not be absurd, and the defeated leaders would not be tortured. Their families would not be threatened. They would not be forced to confess. Indeed, it is most unlikely that they would even think about confessing.

If revolutionary trials and post-war trials can be distinguished from purges, and if they can be justified, morally and politically, as I have tried to suggest they can be, then surely, all the more so, can post-election trials be justified. In fact, however, this *a fortiori* argument does not work, or rather, it works the other way. It is easier to justify the trials of political leaders after the major break of a triumphant revolution or a victorious war than it is after the minor break of a democratic election. Trying kings for treason, or prime ministers and war ministers for aggression or “crimes against humanity,” may involve understandings of treason, aggression, and humanity different from those that once prevailed, but these understandings have been vindicated by revolution and war. The trials enact a new consensus about domestic or international justice. But there is no new consensus, about the foundations of the political order or about the policies of the last administration, after a democratic election. Instead, the defeated party, in opposition now, defends what it did in government, insists on the rightness of its own ideology, and plans for the time when it can return to power and do the same things again.

DEMOCRACY DEPENDS on the willingness of political leaders to go into opposition—and on their expectation that they might one day return to power. We call this rotation in office, and though it does not occur on a regular schedule, it does regularly occur. By contrast, kings and republican politicians do not alternate in office—first Louis XVI, then Robespierre, and then Louis again (actually the restoration and the revolutions of 1830 and 1848 did produce a kind of rotation, but not as a settled constitutional arrangement). Nor did we want, after World War II, to see a Nazi regime ever again in power: first

Hitler, then Adenauer, then Hitler (or Göring) again. Endings such as those of 1793 (the year of the king’s execution) and 1945 are meant to be definitive; but endings such as those of 2000 or 2008, when one political party and then the other was toppled from power, are not in any sense definitive.

The truth about democratic elections is that the stakes are fairly low, compared to the stakes in revolutions and wars. Critically important questions about public policy are (sometimes) decided democratically through party politics and election campaigns; but they are rarely decided in any conclusive way. The argument goes on after the decision has been made, and so do the arguing politicians. Perhaps if the electoral defeat is decisive, the defeated leaders will retire from politics (though usually with the hope of being called back), but their place will be taken by younger leaders with many of the same ideological commitments. This is the sense in which the stakes are low: no one expects to be killed or imprisoned after they lose an election.

Aristotle speaks of the relationship among democratic citizens as “friendship.” That may seem to us too strong a term, but there does have to be a sense among the citizens that they are engaged in a common project, and some readiness (however frayed it may now seem) to recognize the good faith of fellow citizens who disagree about how that project ought to be pursued. Of course, we also recognize individual greed, power lust, and ideological zeal that seem to leave no room for the common project, but with regard to critical policy debates, it is important to be able to assume that all the parties have the general welfare in mind. It is not a disaster if our opponents win this time, because they will not always win. This is how democracy works: all political victories and all political defeats are partial and temporary. They do not put our common project in radical jeopardy. As the saying goes, you win some, you lose some.

SO WE SHOULD think very carefully before we do anything that raises the stakes of democratic politics—and putting your opponents on trial after they lose an election would certainly raise the stakes. There is a narrowly prudential argument against doing that (in addition to the broader prudential argument that I have been making): if we raise the stakes for them, they can raise the stakes for us. Paraphrasing Saint-Just, we might say that nobody can *rule* innocently: there will always be reasons for a

trial. There will always be political maneuvers or policy decisions that violate the law or that can be made to look as if they violate the law. And once the game gets serious in that way, anyone holding office would have a very strong incentive to do whatever was necessary to win the next election. Winning some and losing some would then look like a fool’s politics. It would be very dangerous, I think, to start down this path.

The opposing argument, of course, is the argument of the Gironde: political leaders are not, and should never be, inviolable. We are a political community of equal citizens; no one is exempt from the law. This is a very strong argument, and I do not have a principled response. I want only to suggest that the advocates of absolute justice do not understand how fragile democratic politics is—even in the world’s oldest democracy—and how dependent it is on the willingness of incumbents to leave office. In any case, trials are not our only recourse. There are also congressional investigations, truth commissions, and legislative action (to pay reparations, for example, to victims of the former administration)—all these are political, not judicial, responses, and they figure in the ongoing practice of democracy. Indeed, truth commissions aim at reconciliation, which is the best guarantee of “ongoingness.” Reconciliation certainly seems unlikely in the current political climate, but it is a far better democratic ambition than the imprisonment of your opponents.

I do not mean to deny the responsibility of political leaders for what we might call personal crimes. Not at all. A president who takes bribes (or who commits rape or murder) should be impeached or defeated and put on trial, without regard to his or her office. But it makes sense to treat political crimes differently. Impeachment should be possible here too, but trials are best avoided. When Lincoln suspended habeas corpus, and when Franklin Roosevelt ordered the internment of Japanese-American citizens, and when Bush and Cheney authorized the torture of suspected terrorists, they were acting for what they thought was the public good, not for any personal good. And the best way of dealing with actions of that sort, if we believe them to be wrong, is to “throw the rascals out” in the next election and find some decisive way to repudiate their policies.

But we might reconsider here the British position in 1945—which may be more relevant to post-election than to post-war justice. The fate of democratically elected leaders is indeed, in Sir John

Simon's words, "a political, not a judicial, question." It has to be worked out, one way or another, through the political process. But the people that Churchill called "subordinate" criminals could conceivably be brought to trial—for specific illegal actions—without dangerously raising the stakes of democratic politics. I am very uneasy with this position, since it violates the principle of equality before the law. But the violation is common—consider the trials that followed the My Lai massacre and the abuse of prisoners at Abu Ghraib; and it may serve the rule of law, even if inadequately. It targets only people who are not subject to democratic (that is, electoral) repudiation.

So perhaps we are not a community of absolutely equal citizens. (Absolutism is always a problematic position.) If I capture and torture somebody, I should be tried and punished. If the president orders that done, not just to somebody, but to many bodies, acting, so he says, in the

name of national security, his only punishment is political defeat: we should organize in opposition to his policies and vote against him as soon as we can. But there is a line here that must be carefully drawn. If the president's violations of the law or the Constitution aim at the creation of a tyrannical regime, if it is his own political enemies, not actual enemies of the republic, that he is arresting and torturing, or if he is systematically confusing these two, then we have to find a definitive way to defeat him or to overthrow him. And as part of that process, or after it, a full-scale trial might well be the best available means not only of doing justice, but also of demonstrating, to paraphrase Henry Stimson, our determination to extirpate tyranny and all its fruits forever. But we have not yet had trials like that in the United States, and we should not imagine holding them until necessity forces our hand. May this never come to pass. ♦

mention the small matter of the Balfour Declaration, the Anglo-Jewish chronicle has seemed a picturesque footnote to the dominant teleology of Jewish history, so often, and for understandable reasons, cast as a history of persecution. Compared to the epic of the millions brought to the golden sanctuary of America, or to the carnage of the Shoah, or to the saga of Israel's unrelenting traumas and travails, the Anglo-Jewish chronicle, featuring high hats, Mendoza the bare-knuckle boxer, fried gefilte fish, strayed sons such as Disraeli, and genteel Zionists such as Zangwill, can seem picturesquely incidental.

But a moment's reflection ought to correct this misapprehension. For better or worse, Britain has been one of the great theaters of Jewish history, in which both the familiar drama of suffering and expulsion, as well as the less storied but equally important chronicle of successful liberal integration, has been played out. Now that some of the most challenging recent Jewish historical writing has moved to give the story of "acculturation"—an unlovely word masking a vital truth—as much intellectual and moral power as the story of lamentation, annihilation, and redemption, perhaps the Book of Jewish Albion will be re-positioned as central rather than peripheral to the whole scripture.

Simon Schama THE PATRIARCH

**MOSES MONTEFIORE:
JEWISH LIBERATOR, IMPERIAL HERO**

By Abigail Green
(Harvard University Press,
540 pp., \$35)

IN 1827, AN UPRIGHT, well-to-do English gentleman, traveling through the Levant with his lady wife, ran into some dirty weather en route from Alexandria to Malta. But this particular gentleman was called Moses and his notion of calming the sea was to throw the afikoman half of the middle matzoh of the Passover seder into the churning waters. Apparently, as Abigail Green tells it, in some Sephardi traditions the breaking of the afikoman symbolizes the parting of the Red Sea. Needless to say, it did the trick. The storm abated and the Montefiores, Moses and Judith, were granted a serene moonlit night. At which point, swept along by Green's ripping tale and Montefiore's own description of it "praying to God to preserve us, as He had ... our forefathers from the turbulence of the sea," the enchanted reader wakes from the spell to say—*what?* The date of this salvation at sea was November 26. Passover was six months gone or six months ahead. Did Moses Montefiore habitually carry with him an emergency matzoh for such oc-

casions? We all know that matzot, even the tooth-testing *shmurah* discs that can stand up to serious punishment, would probably not survive extreme maritime stress. So must we imagine an all-weather afikoman-preserver, perhaps custom-hammered in silver, for Moses Montefiore, man of substance, bill-broker for Nathaniel Rothschild, and director of insurance, gas, and mining companies?

Even if a bit of an eyebrow-raiser, the story of Montefiore's tempest-taming matzoh has exemplary power. For it makes the fit between the Gentleman and the Jew less historically improbable. Montefiore could dwell in a Gothic Revival villa in the Kentish seaside town of Ramsgate and settle into the architectural language of Christian yesteryear without any sense of awkwardness. The replica of Rachel's Tomb, built amid the park and shrubberies to house his and his wife's remains, likewise speaks of a confidence that to be terribly British and piously Jewish was not a contradiction in terms.

Some of us, though we came later, already know this. In the 1950s, my father was much given to alternating recitations from Kipling and Sholem Aleichem while poling a punt up the reedy Thames. But for some time now, despite excellent recent historical writing by Todd Endelman, Michael Clark, and others, not to

ABIGAIL GREEN's erudite, intelligent, and graceful biography of Moses Montefiore will play a persuasive part in this revision. A daughter of a Sebag-Montefiore herself, she has had access to some family archival sources not available to her scholarly predecessors, but her kinship to her subject is never uncritical. When Moses Montefiore waxes pompous in his proconsular grandeur (a not infrequent occurrence); when he dons rose-tinted glasses about the prospects of his Palestinian enterprises; when he fails to treat his underlings with the consideration and remuneration they merited; when he intolerantly slams the door of acceptance against those, including members of his own family, who wanted to reform contemporary Judaism; when the trail of the great patriarch leads to extramarital dalliances—Green tells it like it most certainly was. The result of this sympathetic candor is a portrait rich in human complexity from which Montefiore's profound importance for

Simon Schama is professor of art history and history at Columbia University. His most recent book is THE AMERICAN FUTURE: A HISTORY (Ecco).

the history of the Jews rises at last above mere ritual veneration.

There is only one thing wrong with Green's book: its limply formulaic subtitle "Jewish Liberator, Imperial Hero." For Green convincingly demonstrates that Montefiore was neither. His career, inexhaustible in its commitment to an emancipation without assimilation, illuminates instead two more serious issues that may sound familiar. What happens to piety in the age of Jewish modernity? And what kind of international consensus on human rights might be brought to bear on states that wink at atrocity?

Moses Montefiore lived, like a good patriarch, to the biblical age of one hundred. He was born in Livorno in 1784 in the age of the sailing cruiser and the barouche and four, and he died as steam-powered ironclads and the telegraph ate up distance. The first image we have—it is reproduced in Green's book—is a charming marriage miniature; the last is a photograph of the centenarian seer and sage in his old-fashioned starched standing collar and tall pillbox skullcap. In some ways his Victorian longevity turned Montefiore into a ghost in his own lifetime, draining his reputation of the inexhaustible political resourcefulness that had driven it and replacing it with the more innocuous aura of Eminent Philanthropist.

The hospitals, cemeteries, institutes, and synagogues that bear his name, scattered across the American continent from the Bronx to Las Vegas to North Forks, North Dakota preserve only the dimmest trace of what the name Montefiore once signified. Those places out on the prairie and elsewhere were named Montefiore in the 1880s, in the reverent afterglow of his centenary and death, mostly by immigrants from Eastern Europe for whom the appearance of the *Sar*, or Sir, in Odessa or Bucharest, standing six-foot-three in his dress uniform, upright and resolute in the presence of pashas and princes, signified nothing less than the unexpected possibility of collective dignity.

Ask modern Jerusalemites about Montefiore and in all likelihood they will point to the windmill standing outside the walls of the Old City, across the valley of Gehenna, in the Yemin Moshe district that also bears his name: once an unprepossessing neighborhood of dirt and rubble, now seriously upscale and desirable. The mill, constructed by an English builder from Montefiore's own specifications, was for him an entirely practical project, intended to grind grain that would lower the cost of bread for the chroni-

cally impoverished Jewish population of the nineteenth-century city. But like so many of his attempts at enlightened social and economic engineering, it became an architectural testimony to the hopeless distance between ideals and reality. The costs of building and running the mill were far steeper than Montefiore anticipated, and the winds of Judea did not oblige its sails with quite the same daily vigor as the stiff breezes of his Kentish home. Today the structure looks bizarrely out of place, as if it had landed, like the monolith in the Kubrick movie, from an alien planet. And any dispassionate verdict on the enterprises that meant most to Montefiore—the return to Zion for the harassed and destitute Jews of the Levant and Europe; the determination to make the Russian government desist from its part in condoning pogroms or enforcing mass evictions—risks making the Knight of the Realm look rather quixotic in his grand delusions: a tilter at, as much as a builder of, windmills.

When Montefiore died in 1885, modern political anti-Semitism was already hatching its dragons' eggs in the Germanic and Slavic lands. The liberal British imperium, of which Sir Moses was the impeccable embodiment, was starting to take on the glow of an unmistakable sunset. Initially, it could do little about this ominous development other than open its own doors to the terrorized victims. But Green makes a strong case that notwithstanding this disastrous reversal of fortune, if there was one figure responsible for setting the just treatment of the Jews at the heart of the liberal international crusade for humanitarian equity, it was Moses Montefiore. She also wants to move the emphasis in his story away from the colorful and courageous adventures of the latter-day knight-errant—the descents by land and sea on Moroccan Mogador, on Smyrna, Rome, and Damascus, armed with a heady combination of Victorian self-righteousness and Jewish temerity—toward the "Montefiore publicity machine," which, for the first time, made international Jewish solidarity among the piously emancipated, in Paris and Berlin as well as London, a possibility. A stripling Jewish vernacular press plays as much a part in this story as the expectant throngs of rabbis, yeshiva students, children, and habitual schnorrers lining the streets of his visitations, pouring prayers and praise on the head of their legendary *nasi*, or prince.

This newfound internationalism of Jewish plutocrats and *haute bourgeoisie* may

have been Montefiore's most enduring legacy, but Green is also at pains to point out the peculiarly British historical conditions that gave his work its international reach. His timing was perfect. Like others among the Jewish oligarchs of money, Montefiore served his apprenticeship in the city at exactly the moment when the magnitude of the military effort needed to stave off Napoleonic power gave the Rothschilds and the Montefiores their priceless opportunity. Armies were being mobilized by the hundreds of thousands, squandered on brutal campaigns, and then mobilized all over again. The same went for massively armed ships of the line. There was the matter of brokering the necessary advances on the bond market to save the empire from bankruptcy, and then smuggling the funds into the European theater of war; and those bankers with the most dependable international contacts did best. More notoriously, the same perfectly placed advance intelligence offered opportunities for outrageous profiteering at moments when the fate of Europe hung in the balance, as it so often did after 1810. Nathaniel Rothschild's way—even before Waterloo—was to spread ill tidings, watch the bond market take a dive, dispatch brokers like young Montefiore to buy up as much as they could at rock-bottom prices, and stand back while the bet on victory paid off and sent the price rocketing.

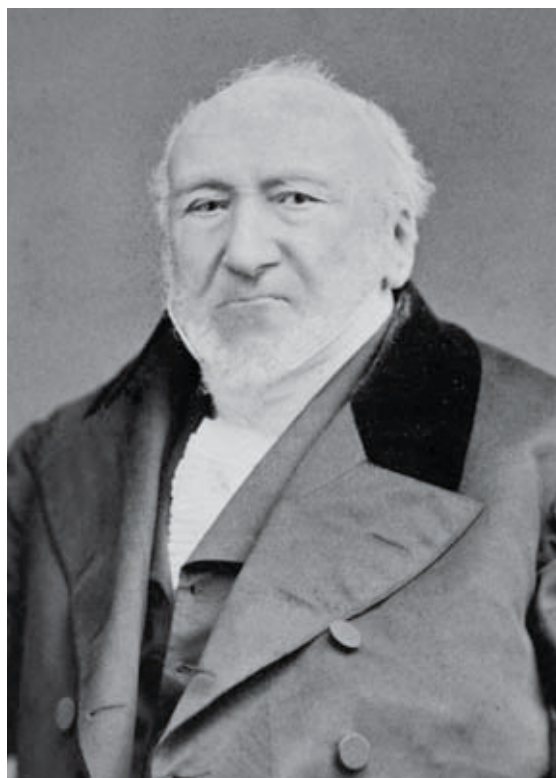
As Nathaniel Rothschild's junior partner, Montefiore became very rich very fast. Victory over Bonaparte for the coalition powers was politically absolute but fiscally pyrrhic. Only the Rothschilds and those who were part of their enterprise were in a position to save the grandest states from bankruptcy. But this indispensability also put that generation of entrepreneurs in a position to make money from establishing new technology-powered infrastructure without which any self-respecting empire would be doomed to backwardness. Using the extended networks that bound together the great names of Anglo-Jewry—especially the Sephardi end, the Mocattas and the Goldsmids—Montefiore diversified out into this industrial-imperial economy, investing in marine insurance, gas lighting, railways, and mines. It was a high-yield, high-risk financial world, as prone to busts as booms. But there was enough money to be made to turn Montefiore, as yet a little selective in his religious observance, into a pillar of the community and a grandee of the beautiful early eighteenth-century synagogue of Bevis Marks, a stone's throw from his place of business in the city.

His ascent to eminence was completed with a good marriage: across community lines, to Judith Barent-Cohen, Ashkenazi, loaded, devout, curly, and comely. The story of this childless and selfless woman—an inseparable companion on long, incredibly arduous journeys across Europe and the Mediterranean, through landscapes wrecked by fire and earthquake, stricken with cholera, torn with riot and war—is as much part of Abigail Green's story as her hero's, not least because the intelligent and perceptive Judith often left a richer account of their travels and travails than her more woodenly grandiose husband. Green is especially winning when getting to grips with the physical realities of what the Montefiores had to face when they left the crenellated property at Ramsgate. Shopping for a “top of the range” carriage from “the famous Parisian coachmaker Beau-pré” to take them long-distance traveling in 1816, “they would have been concerned about storage, exploring cupboards beneath the seats, secret drawers under front windows and pockets hidden in the vehicle’s padded lining where they would keep their valuables safe from dust and prying eyes. Finally they would have worried about comfort: cushions that did not slip, rounded corners, well-constructed blinds and closely fitted windows that would protect them from drafts. At 4,072 francs the price was steep.” In a story this well told, the reader is always pulled along for the jolting ride.

THE MOST MOMENTOUS of those journeys was to Palestine in 1827—the trip that, but for the miracle of the afikoman, would have seen the Montefiores swallowed in the Mediterranean billows. Before the journey, Moses, in his early forties, while never defensive, had always taken his Judaism socially rather than devoutly. On that first trip out, the couple was less than strictly kosher. But despite Jerusalem being a “shabby tumbledown place . . . overflowing with the rubble of centuries—stones, earth, ashes, bits of pottery, bones, and wood,” it was still an epiphany. “With humble thanks to my God,” Montefiore wrote in his diary, with what Green calls unusual personal intensity, “the God of my Fathers, the only True God, we arrived safe, without any accident in the City of our forefathers, the great and long-desired object of our wishes and journey. May God Al-

mighty bless my dear Wife and . . . make me more deserving of his manifold blessings & mercies, that I may become every day a better man, a more righteous Jew, and more useful to my poorer brethren in general: so that my latter days may be virtuous and peaceable!”

The profession was evidently sincere. Future journeys would stop for Shabbat. Prayers would be regular. The ritual slaughterer would come along with the entourage, and Montefiore would make a point of enacting *tzedakah*—the great Jewish obligation of charity—wherever it was needed. And it was needed among the threadbare of Safed and Jerusalem; and in the fire-ravaged community in



Moses Montefiore, 1870

Smyrna, and in Mogador (now Essaouira), where in 1844 the Jews had been left in their walled quarter to fend for themselves against sack, rape, and arson, while the Arab population fled for safety.

So a very remarkable thing happened to the man of business. As he became more British—a captain in the militia, a sheriff of the city of London—he became more, not less, Jewish. He acquired from the herald-at-arms armorial bearings for his family, but inscribed with the word “Jerusalem.” Instead of depleting each other, the two identities linked arms and set forth to do good for the British and the Jews, as if it were the most natural thing in the world that their historical

destinies were converging.

But so they were, and Montefiore was both the agent and the beneficiary of that convergence. One of the best things about Green's biography is that it gives full weight to Montefiore's rapidly developing political intelligence—an understanding far more forthright and unapologetic about how monied authority could be translated into diplomatic clout. Someone more inclined to nervousness about provoking accusations that a monied baron descending on Oriental pashas only demonstrated that the Jews were indeed (in Alphonse de Toussenel's anti-Semitic jibe) “the kings of the epoch” would not have gone straight to the doors of the Ottoman sultan, and Muhammad Ali, the pasha of Egypt, to demand equitable treatment for Jews subject to the terror of blood libels.

BUT Montefiore also grasped two other, interconnected elements in early Victorian culture that for once dropped gifts into the lap of his people. The first element was strategic. Though France was vanquished and Russia a long way away, British policymakers—above all, Viscount Palmerston, the most shrewdly extravagant of them all—were suspicious that neither of these conditions was to be taken for granted. The Napoleonic moment in Egypt was not to be altogether abandoned, and the colonial acquisition of Algeria in 1830 made a Levantine thrust of French ambitions more likely. And Russia was never far away from the Hindu Kush. No sooner had the Indian Raj been consolidated than its guardians in London became obsessed with a pincer movement that would see Russia cut the routes to India south from a domination of the Bosphorus and north

through control of Afghanistan. The geostrategic paranoia that would culminate in the Crimean War—and never really go away as long as there was a British Raj—committed Britain to propping up the Ottoman empire virtually indefinitely. But liberal social theory prescribed that this could only be achieved if the Ottomans could be persuaded to modernize their autocracy. And for that to happen, so the theory went, the presence of vigorous “modernizing elements” was required, among whom, of course, were the Jews of the Turkish port cities, already prominent and successful and treated with relative benevolence, and now a key to geostrategic success.

So Palmerston turned eagerly to the kind of British Jews who were themselves unabashed modernizers, who could speak freely to the likes of the Camondo patriarians of Istanbul and bring about the social, educational, and political evolution that would turn Turkey from the sick man of Europe into a reinvigorated engine of reform and prosperity. Moses Montefiore was that kind of Jew. And the fact that he was famously devout as well as strappingly patriotic was only a further sign of his integrity. Doors would be unlocked wherever this Moses went, and the queen herself would smile upon his labors.

But there was another kind of Victorian mover and shaker, no less enabling in Montefiore's career, driven less by imperial strategy and more by messianic conviction. Jews had returned to England in the 1650s as a result of Oliver Cromwell's subscription to the truism that a precondition of the second coming was the dispersion of the Jews to every land in the world, followed by their eventual conversion. Two centuries later the timetable had been adjusted somewhat, ingathering having replaced dispersion as a priority, and evangelicals were on fire to secure the return of the Jews to the Holy Land. This dovetailing of Christian ardor with rekindled Jewish yearnings for Jerusalem became a fierce passion in the midst of Victorian life—its inoculation against callow materialism. It showed up in pre-Raphaelite painting; in the watercolors of David Roberts; in philo-Zionist sermons; in the literary construction of morally noble Lost Semites such as George Eliot's Daniel Deronda, who are granted a smoky epiphany with a tubercular student of the Talmud, after which they become providentially awakened to their true identity, start to grow extensive facial hair, and look dreamily toward Jerusalem. The fact that there was also so much venomous anti-Semitism around in the same culture, courtesy of Carlyle and Dickens and others, only stoked the romantic idealism of these Christian Zionists.

In the pioneering work of the first generation of British Holy Land archaeologists dispatched by the Palestine Exploration Fund (its patroness was Queen Victoria), most of whom were engineers such as Claude Conder and the twenty-six-year-old Herbert Kitchener, the two strands of philo-Semitism came together. Batting away clouds of mosquitoes, sweating their way through yellow fever, plunging into tunnels and the beckoning maze of late Ottoman speculation, the Victorian diggers and sifters produced in short order the first Ordinance

Survey maps of Jerusalem (things of fabulously stringent beauty) and the Palestinian cartography on which the army of General Allenby eventually relied for his conquest in 1917.

MUCH OF THIS was well beyond Montefiore's purview, but he became a genius at harnessing both strategic pragmatism and evangelical zeal to promote the cause of humanitarian aid to victimized Jewish populations, while at the same time allowing himself to believe that one day a refuge in Zion was not altogether imaginary. The fact that there was no Grand Montefiore Plan, no full Zionist program, but merely a succession of Jewish emergencies that summoned him to drag his old bones once more on creaky carriages and leaky ships only makes his tireless belief in making a difference the more affecting. The aggressive, sometimes blustering innocence that was the hallmark of a Montefiore campaign usually immunized him from local suspicion, though Green points out that his irrepressible instinct to take control of relief efforts often got in the way of the international orchestration of succor whose humble servant he claimed to be. The story of the relationship between the knight of Ramsgate and his French counterpart Adolphe Crémieux, a democratic republican, is not a happy tale. When the two tried to work together on a mission to Damascus in 1840, after Jews had been victimized by a foul blood libel, Crémieux voiced his bitter resentment at Montefiore's presumption of leadership. These quarrels, alas, are familiar in Jewish history.

In spite of his moral bumptiousness, or quite possibly because of it, Montefiore often got the job done. By hook and by crook he managed to secure an audience with the sultan that resulted in a decree committing the Turkish empire to a formal protection of the lives and the property of Jews on an equal basis with all other subjects. This, at long last, was an end to the provisions of the medieval Pact of Umar by which the Jews, as a people of the book, received protection from Islam on condition of accepting the yoke of second-class subject. The institutionalized humiliation of annual tribute levies, obligatory codes of demeaning dress, and enclosure into a sealed-off district within their cities were no more, at least in some parts of the Ottoman realms. The Jews of İzmir and Istanbul were delivered from social claustrophobia and economic constriction. Any visitor to the Jewish museum in Istanbul will see rich photographic evidence of a com-

munity in flower, making not only money but also marriages, education, a life in the professions.

Not all Montefiore's missions on behalf of the distressed and the defamed worked out as he hoped. In Rome, in 1858, it was claimed that a six-year-old Jewish boy named Edgardo Mortara had been secretly baptized by the family housemaid and then abducted by the papal police. Efforts by the distraught parents to have him returned to his family failed. Pope Pius IX claimed to have shed tears over the tragedy, though Montefiore and many others, horrified by the papal kidnapping, suspected these might have been crocodilian. Descending on Rome, amid yet more blood libel riots, Montefiore never did get his papal audience and was brushed off by a senior cardinal. But he succeeded in making the violation of Jewish rights into one of the great missions of international liberalism. If this liberalism would eventually fail the test of the ultimate horror, that was hardly Montefiore's failing.

Green's book is a rich gift to history—and not just Jewish history—for its account not just of what Moses Montefiore did or did not do, but also of what he was. Her pages are most memorable when they simply bring the old boy to vivid life amid all the complexities and perplexities of his great self-imposed calling. In Vilna, for example, on another ultimately futile mission to dissuade the czar from enforcing the summary eviction of Jews from rural regions of the Pale, Montefiore, moving comfortably among the emancipated and the Orthodox, donned the *tallit* on his scarlet dress uniform with the frogging and the ostrich plume hat, as occasion required. He knew how simultaneously to honor the memory of the Vilna Gaon and the aspirations of modernizing Jews to secular education: both were ways of being Jewish in Vilna. He listened to the dispossessed and the destitute, did what he could to help, and on departing declared that "I leave you but my heart will ever remain with you. When my brethren suffer, I feel it painfully; when they have reason to weep, my eyes shed tears."

The sentimentality is of a piece with the sincerity. But what mattered—and still does—is that the grandee of Ramsgate, obstinate, egotistical, and inexhaustible as he was, could put himself in the shoes of the wretched and the persecuted among his co-religionists—and more, that he expected that his example would become a routine decency. As Abigail Green's splendid book shows, there are worse ways to live a Jewish life. ♦

Anne Applebaum

"ANGEL FACTORIES"

CHILDREN OF THE GULAG

By Cathy A. Frierson

and Semyon S. Vilensky

(Yale University Press, 496 pp., \$55)

SEVERAL YEARS AGO, a friend who helped me to find my way around the Russian State Archives in Moscow asked if I would like to meet another woman who was also working there. She was not doing research for a book, and she was not a scholar. Instead, she was indulging her curiosity and her nostalgia. Forty years earlier, she had worked as a baby nurse in a children's home inside one of Stalin's labor camps. Now she wanted to find out what had happened to some of the people she had known there, to jog her memory of names and dates.

A meeting was arranged, and we talked for perhaps an hour—without a tape recorder, because she wanted to remain anonymous. In the course of the conversation it became clear that she had in fact sought me out. Our mutual acquaintance had told her that I was an American writing about the Gulag, and she wanted to make a few things clear. Most of all, she wanted to impress upon me how clean and orderly had been the children's home, and to tell me how happy the children had been within its walls. She also wanted me to know that these children's mothers were criminals who were all too happy to abandon them, that the nurses and caretakers had saved them from a terrible fate. She had even brought a photograph, which she gave to me.

The picture showed a group of children standing around a holiday tree, with neatly dressed caretakers in the background. I looked at the picture, and agreed that yes, the children were not starving, and yes, the caretakers did look professional in their white uniforms. But there was a problem with the photograph: all of the children in it were dressed alike. All of them had shaved heads. They were not smiling. And thus the effect of the photograph on me was precisely the opposite of what the former nurse had intended. The children looked exactly like little prisoners—which, in fact, is what they were. Their nursery lay within the perimeter of the *zona*, the prison zone,

and would have been surrounded by mud and barbed wire.

Yet the former Gulag nurse was unwilling, or unable, to see the horror of this. I looked at the picture and saw sad children, growing up in a terrible place. She looked at the picture and saw the greatness of the Soviet state, which took care even of the children of criminals.

Of all the odd things about the Soviet Union, perhaps the oddest was the way in which official propaganda—which told people what the world was supposed to look like—so often triumphed over everyday experience, which revealed that things were different. In this case, by "official propaganda" I do not mean the vague fibbing that goes on during the election seasons of mature democracies. Soviet propaganda was blared from radios and televisions, posted on walls, printed in newspapers, repeated at party and Komsomol meetings. It was constant, it was repetitive, it was specific. During Stalin's lifetime, it could be very dangerous to contradict any of it in public, and many people were afraid to do so in private as well. Yet some people believed it, or wanted to believe it, or reckoned it was a good idea to believe in it. And thus it was not ineffective.

When the propagandists said that Soviet citizens were becoming ever richer and better fed, many people were inclined to think that this could be true, even though they themselves lived poorly and badly. When the propagandists said that factories were booming and the harvest was successful, some people accepted this too, even though industrial products were unavailable and bread was rationed. And when the propagandists said that all Soviet citizens should thank Comrade Stalin for their happy Soviet childhood, many could not refuse this either. Even if they knew from personal experience that not all Soviet childhoods were happy, they could imagine that some really had been.

THIS STRANGE relationship between real life and official fiction is one of the central subjects of *Children of the Gulag*, a significant and sickening book, which contains several different kinds of documentary evidence, as well as commentary. Much of the archival material here was published in

Russian, in a volume (*Deti Gulaga 1918–1956: Dokumenty*) edited by Semyon Vilensky, one of this book's co-authors. For that volume and this one, Vilensky also supplied some memoir material from the private archive of Vozvrashchenie ("Return"), an organization which he founded, and which is dedicated to the preservation of the memory of Stalin's victims. Cathy Frierson, the other co-author, has added some new material—notably interviews with survivors and with the children of survivors. This combination of sources allows Vilensky and Frierson to show the stark contrasts between official policies toward Soviet children and their actual experiences.

The book's scope is broad: the word "Gulag" in the title is here used as a general term for the Soviet experience, and *Children of the Gulag* is really a history of Soviet policy toward children. As a result, Frierson and Vilensky touch upon an ambitiously wide range of subjects: children of political prisoners, children of collectivized peasants, children of deportees, as well as children living and working in labor camps. They also describe many different eras—not only the Stalinist period but also the revolution, World War II, and the post-Stalinist period.

They keep returning to the stark contrast between public image and private reality, which was a fact of Soviet life from the very beginning. One of the first public discussions of child policy in the Soviet Union was launched in 1924 by Nadezhda Krupskaya, the widow of Lenin, who made a public appeal on behalf of homeless children. As a result, more than 650,000 people joined the "Friends of Children Society," a charity dedicated to that cause, and Krupskaya became its public face. At that time, there were thought to be some 80,000 children living on the streets of Moscow. More than 200,000 children were living in various kinds of orphanages. All of them had lost their parents to revolution, civil war, terror, and famine, and the conditions in which they lived were often horrific.

Yet even as she appealed for more resources, Krupskaya was defensive. She was not a critic of Soviet orphanages. On the contrary, her instinct was to praise them—not because they were good or clean, but because they were Soviet. While not denying that some of them were lacking in basic facilities, she declared that "our children's homes

Anne Applebaum is a columnist for *THE WASHINGTON POST* and *SLATE*, and the author of *GULAG: A HISTORY* (Doubleday).

are under public supervision, [and] this alone protects them from a series of pedagogical errors." Talking to a foreign journalist, she also made excuses: "We are building socialism . . . and as long as we are building socialism but have not yet built it, we will also have homeless children." She even went so far as to denounce a phrase then in wide use. Soviet orphanages, she said, were not "angel factories," or places where children went to die. This phrase had been used in the czarist era as a description of foundling homes for poor children, but it was not appropriate any longer, now that the foundling homes had been nationalized. "We have no angel factories," she stated categorically.

Krupskaia never retracted those words. But over the subsequent decade, she and other Soviet officials received hundreds of letters testifying to the horrors of childhood within the orphanages and outside of them. Several of those letters are reprinted here. In 1925, a political prisoner wrote to her on behalf of "my little daughter Ia, the youngest inhabitant of the Chelyabinsk isolator," asking for two pairs of tights and some oatmeal. In 1926, the inhabitants of an orphanage in the village of Moika also penned a letter, describing their living conditions as "very bad":

We have meat rarely, and then only a little bit. The bread is rye, we haven't seen sugar for three months. The little ones can't hold out, they gather potato peels and eat them. Sometimes, because there's no produce, we boil porridge, it's something like pig slop. . . . Children wear the same underwear for months, and sometimes even longer, without taking them off, because they have nothing to change into. They heat up the bathhouse two times a month, and even then children wash without soap, so that children are getting parasites. There is no bed linen, there are mattresses but not cleaned for a year, the blankets are in shreds, teeming with lice.

Not only was this a typical description of a Soviet orphanage, it was one that could have been written at any time in the 1920s, 1930s, or 1940s. In 1934, for example, children from a colony near Moscow were still eating only 600 grams of bread per day, and still washing and changing their clothes only once a month. "We ask you," they wrote to Krupskaia (calling her "our

dear mamasha"), to "help us in our bad life." In that same year, another group of children wrote to Krupskaia and asked her to organize the dismissal of their orphanage director, who "beats children for the slightest act."

Not all of the requests were on paper. One woman approached Krupskaia at an official reception and told her that the arrests of her daughter and her son-in-law had left two small children without parents. Krupskaia told her that she could not do anything about the daughter, but would happily try to find a place for the woman's grandchildren in an orphanage. "Give up your own children to an orphanage," the woman snapped. This was a harsh insult, since Krupskaia famously had no children of her own. The grandchildren in question experienced no repercussions. But neither did Krupskaia, the self-designated defender of children, ever help them.

The story of that particular family is unusually well documented, largely because the arrested mother, Olga Zakgeim-Sliozberg, was also a talented memoirist. Her book, *My Journey*, first appeared in the underground press in the 1970s. Parts were published in English in another collection, called *Till My Tale Is Told*, edited by Vilensky using the author's pen name, Olga Adamova-Sliozberg. For this book, Frierson tracked down Zakgeim's children and interviewed them, making it now possible to tell that family's story from several perspectives. The children describe what they experienced when their parents disappeared (unknown to them, their father was executed soon afterwards); and Zakgeim herself writes eloquently about the emotions of arrested mothers. In one particularly horrific scene, she describes what happened when a new prisoner entered her prison cell. The woman was wearing a low-cut, flimsy pink dress and had a flower in her hair; she had been taken directly from a party, and she kept calling out the name of her young son:

She rattled on, cried, and incessantly screamed: "My Levochka, Levochka!" . . .

Suddenly, in one corner, a woman became hysterical, wailing, "My Yura, my Yura!"

And it spread:

"My Irochka!"

"My Mishenka!"

Half the cell had become hysterical.

I covered my head with a shawl and experienced an overwhelming desire to

cry out too, "My Shurik, my Ellochka!" But I bit my hand until it bled, covered my ears and closed my eyes.

THE ZAKGEIM FAMILY story illustrates also another theme central to Frierson and Vilensky's work: the manner in which the Soviet state came to treat whole families as "enemies." Once again, official policy on this subject was perfectly clear. In 1935, Stalin declared that "a son should not answer for his father," and this phrase was often repeated by party and Kom-somol leaders. In practice, however, Stalin treated the designation "enemy of the people" like a genetic disease: if one family member was "guilty," then others would be as well—and of course children would inherit the same suspicious genes. It often happened that husbands, wives, and children were arrested at the same time—sometimes to be followed later by brothers and sisters and cousins. In the late 1930s, special camps were set up for wives of Enemies of the People. In the 1940s, Polish and Baltic families were deported and forcibly resettled in villages—fathers, mothers, grandparents, and grandchildren all together.

But if children were guilty, then it followed that some of them must be imprisoned. That is why, alongside the hundreds of thousands of children in Soviet orphanages, there were also children living in actual labor camps—not the metaphorical Gulag of this book's title, but the literal one. They lived behind barbed wire, served out sentences, and worked as forced laborers. In 1944, Lavrenti Beria, the head of the Soviet secret police, proudly informed Stalin that the Gulag's juvenile camps had contributed impressively to the war effort, among other things producing mines and grenades.

Not all of the children in the camps had themselves received sentences. Some arrived as infants, along with their mothers, like the woman who wrote to Krupskaia begging for two pairs of tights. A number of memoirists describe the horror of finding themselves inside a cell with a nursing mother—though it was even more horrible to be in a cell with a nursing mother who had been separated from her infant during arrest. And many children arrived in the camps because they were born there—living proof that the strict rules prohibiting contact between male and female prisoners (and between female prisoners and guards) were not observed.

Unwanted though they might have been, the children's presence was offi-

cially acknowledged, and the Gulag's central bureaucracy at different times sent various instructions to camp commanders designed to ensure that they "grow up and develop normally," some of which Frierson and Vilensky have included. According to one particularly chilling directive, "toys which are not spoiled by washing and boiling, made of rubber, celluloid and bone, shall be permitted." According to another, breastfeeding "shall take place for 20-30 minutes according to a schedule set by the nursery doctor. At these times, the wardens shall bring the imprisoned mothers from their cells to the nursery." Anyone who has ever cared for an infant will know just how difficult such a "schedule" would have been to keep, and will not be surprised to learn that under those circumstances children died of starvation and neglect, even before they were sent away from their mothers. Krupskaya may not have liked the expression "angel factories" to describe Soviet orphanages, but the term is entirely appropriate to many nurseries within the camps.

BUT THERE WERE also children and teenagers who found themselves in the special juvenile labor camps, or even in adult camps and prisons, because they had themselves been arrested. These were often Krupskaya's orphans, who had grown up to become pickpockets and thieves. Solzhenitsyn describes them as totally amoral, having "no concept of good and evil," and other memoirists write about them with equal horror. In the juvenile camps, they formed gangs and sometimes beat up the staff. In the adult camps, they often served as mascots and errand boys for the older criminals.

Others were, to put it simply, political prisoners. Frierson and Vilensky document the extraordinary case of fifteen-year-old Vladimir Moroz, who entered an orphanage after the arrests of his parents and elder brother in 1937. Moroz himself was arrested in 1938. His crime was keeping a diary, and daring to put his feelings into words. He wrote with loathing and disgust of the orphanage, and he mourned the tragic arrest of his parents. He also insulted the Soviet leadership, describing them as "a small heap of satiated, fattened people" running a state "90 percent of whose population are miserable people." In response, his investigators angrily accused him of having "carried out counterrevolutionary activity among the wards of the orphanage" and of having "slandered the

leaders of the Bolshevik Communist Party and of the Soviet government, in particular Comrade Stalin."

Even then, this fifteen-year-old could not prevent himself from writing what he believed to be true. Following his arrest, he wrote a letter to Stalin, in which, among other things, he quoted the founder of the Bolsheviks: "Lenin said, 'In the Soviet nation there should not be

any unfortunate children. Let there be young happy citizens.' But am I happy? No." For voicing these kinds of opinions, Moroz was condemned to a labor camp, despite being underage. He died there soon afterwards. His story contains its own moral: Moroz had dared proclaim that official propaganda was not reality, and that all Soviet childhoods were not happy. He paid the ultimate price. ♦

Ideal Cities

Ideal cities are cities where the neighbors
play soul music all night long & don't care

who they bother because who doesn't like Holy Ghost
or Loose Booty? Ideal cities have at least one drunk lady

outside the liquor store mornings, who asks you to hold
her cigarette so she can lean in to touch your baby.

In ideal cities, the pharmacist knows your prescriptions
by heart. In ideal cities your neighbor sells pot to the cops

for a living, though you've never seen him do it & most days
he wears a caftan to glue rhinestones on the cement frogs

in his yard. On trash night in ideal cities your other neighbors
swap stories in the alleys. Ideal cities

have margins that aren't pretty or bleak
and are without proper representation

but have no grievances. My ideal city
has a wish-list written on the back

of an envelope scrap, an ATM slip.
My ideal city is peripheral and claims

uneven sidewalks. In the ideal city
my neighbor is a taxi driver.

My neighbor is at sea.
My neighbor thinks

his house is haunted
while his wife's away

on business. My neighbor
gives a robber a glass

of Château Malescot St.-Exupéry
and a hug. In the ideal city my neighbors

are a multi-generational
family & one guy

who puts chairs
in the street

to save a spot
for our moving truck.

ERIKA MEITNER

Washington Diarist

Family Business

EMBARRASSMENT is an important element in the pedagogy of experience. There are mistakes I will never make again because I made them once and was usefully shamed. In the winter of 1974, when I was a bright and callow student, and did not yet grasp the difference between knowledge and knowingness, I endured such a lucky education at the hands of Diana Trilling. The subject was the danger of simplification in the intellectual engagement with politics. She had signed a letter in *The New York Times Book Review* protesting that Mary McCarthy, in an appreciation of Philip Rahv's liberal anti-Stalinism, had neglected the liberal anti-Stalinism of other intellectuals, herself included. I casually wondered aloud why she protested so much. I will never forget the castigation that followed. With her uncanny mixture of ferocity and affection, Diana instructed me in the art of being against Joseph Stalin and against Joseph McCarthy at the same time. She meant genuinely against both of them, equally against both of them, without making any excuses for either of them, without any "to be sure" sentences that exposed one of your dissents as a minor premise: a position forthrightly comprised of two major premises. Not a commitment and a credential; two commitments. This was not the "center," or half of what the left thought and half of what the right thought; it was its own place on the map. And a small place it was, too: the refusal to play the game of allowing McCarthyism to extenuate Stalinism or Stalinism to extenuate McCarthyism left these brave people somewhat friendless, though in their own terrific company. Stalinism and McCarthyism are gone now, but the style of evasion remains. Everybody is "to be sure" offended by every evil, and how dare anybody suggest otherwise, but the bifocal vision, the one that manages to hit all the stresses and honor all the emphases, is still very rare.

Now to family business. Here is what I mean by "to be sure" sentences. In a

worry about the future of liberal Zionism in *The New York Review of Books*, which is not known for its worry about the future of any kind of Zionism, Peter Beinart takes care to add: "Yes, Israel faces threats from Hezbollah and Hamas." And: "Human Rights Watch and Amnesty International are not infallible." And: "Of course, Israel ... must sometimes take morally difficult actions in its own defense." Of course! All this will not do. Israel is also not infallible, but Beinart does not leave it at that. The racist ideologies and hostile arsenals of Hamas and Hezbollah, and the disquiet that they provoke in Israel, cannot be so glibly treated—unless, of course, one wishes to make it into *The New York Review of Books*, where there is no bifocal vision of Israelis and Palestinians, and Hamas is described as a "last chance for peace." Beinart's pseudo-courageous article is an anthology of xenophobic quotations by Israeli hawks and anguished quotations by Israeli doves: familiar stuff. I stand with the anguish, and have said so many times in these pages. But liberal Zionism must be as much Zionism as liberalism, and I do not see that the depredations of the settlers and their political sponsors relieve one of the obligation to include Palestinian behavior prominently among the causes of the conflict (in Beinart's piece Palestinians appear tenderly as "decent people betrayed by bad leaders"), or to assert the moral imperative of Israeli security among its other moral challenges. The lovelier Israel is also threatened by bombs and missiles. Does Beinart believe that the liberal discussion of Palestine suffers from too much solicitude for Israel's security? Does he really think that the paltry affiliations of young Jews in America are adequately explained by the alienating effects of Avigdor Lieberman and Effi Eitam? He has produced yet another theory of AIPAC as SMERSH, except that this time the omnipotent villains are destroying not American foreign policy but American Zionism.

A FEW WEEKS AGO Harold Bloom, who has been posing as a Jewish scholar for many years, lauded Anthony Julius's

extraordinary study of anti-Semitism in Britain in *The New York Times Book Review*. As usual, he wrote wildly. He made Britain even worse than it is. Up rose James Wood to chastise him, in a letter, for his claim that the anti-Zionism of "the English literary and academic establishment" is no different than anti-Semitism, and to deliver this *beau geste*: "Bloom might have noted that some of the most robust left-wing discussion of Israeli policy has come from members of the British literary and academic establishment who are also Jewish (Tony Judt, Harold Pinter, Mike Leigh, Jacqueline Rose)." It is an old and easy point, often made by non-Jews who envy Jews their lack of inhibition in speaking about themselves. So what if Wood's authorities are Jews? Can Jews not be wrong, or anti-Semitic? Wood's Jews are certainly anti-Zionist. Judt has called for the dissolution of the Jewish state, and a few years ago he declared that if his view that American policy in the Middle East is controlled by AIPAC "sounds an awful lot, like, you know, the Protocols of the Elders of Zion ... well, if it sounds like it's unfortunate, but that's just how it is." (I found this disgrace in Julius's book.) Pinter was a rabid anti-Israeli and anti-American crank. For Rose, mainstream Zionism is Jewish fascism, and also a psychopathological condition. (As one of her admirers on Amazon says, her work is "incitful.") I do not know Leigh's opinions, and I do not intend to let them ruin my pleasure in his films. Wood makes no mention of academic boycotts and other outrages. He seems to believe that since anti-Zionism is not the same as anti-Semitism, anti-Semitism can never take the form of anti-Zionism. This is unreliable narration. So is his superior remark that "there is more political discussion of this order in Britain than in America" because "most Americans live in almost complete ignorance of ... certain political realities and facts." I will not defend the political literacy of my countrymen, but the appeal to an epistemic handicap is always a bad sign. What makes England so intrinsically enlightened? They have *The Guardian*, I know. But I was not aware that the American media, which Mort and Marty and I control, has been extolling Israel's policies and leaders. The truth is that everyone finds the facts that are demanded by their level of honesty. And since these days you are thought to accuse someone of anti-Semitism if you accuse them of scanting anti-Semitism, I want to say also that Wood detests anti-Semitism, to be sure.

LEON WIESELTIER



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you don't just fill their belly**

**You fill their mind
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